

MT LEGISLATIVE HISTORY

Chapter 536 19 83

Bill (H) 548 S _____

Original bill & hist. ✓ C

H. Committee on Appropriations

S. Committee on Finance and Claims

Hearing Date(s) Feb 17 ✓ C

Hearing Date(s) Mar 11 ✓ C

Feb 20 ✓ C

Mar 17 ✓ C

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Date Out Feb 20 ✓ C

Mar 17 ✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

TRANSMITTED TO GOVERNOR: 03/21/83
SIGNED: 03/23/83, CHAPTER 235

HB 547 -- HAND, BLISS, PISTORIA, ET AL. -- MAKING ASSIGNMENT OF A NUMBER A CONDITION
OF VOTER REGISTRATION AND REQUIRING THE ELECTION ADMINISTRATOR TO ASSIGN A NUMBER
WITHIN 3 WORKING DAYS OF RECEIPT OF A REGISTRATION CARD; AMENDING....

INTRODUCED: 01/28/83
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 01/28/83
HEARING: 2/7/83
REPORT: 02/09/83, DO PASS, AS AMENDED
2ND READING: 02/11/83, DO PASS AYES: 73; NAYS: 1
3RD READING: 02/14/83, DO PASS AYES: 94; NAYS: 2

TRANSMITTED TO SENATE: 2/14/83
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 02/15/83
HEARING: 3/15/83
REPORT: 3/15/83, BE CONCURRED IN
2ND READING: 03/17/83 AYES: 48; NAYS: 0
3RD READING: 03/19/83 AYES: 50; NAYS: 0

RETURNED TO HOUSE: 3/19/83

TRANSMITTED TO GOVERNOR: 03/25/83
SIGNED: 03/29/83, CHAPTER 284

HB 548 -- MARKS, BARDANOUVE, RAMIREZ, ET AL. -- TO GENERALLY REVISE, EXPAND, AND
CLARIFY THE LAW PERTAINING TO BUDGET AMENDMENTS; AMENDING....
BY REQUEST OF: THE LEGISLATIVE FINANCE COMMITTEE

INTRODUCED: 01/28/83
REFERRED TO COMMITTEE ON APPROPRIATIONS: 01/28/83
HEARING: 2/17/83
REPORT: 02/21/83, DO PASS, AS AMENDED
2ND READING: 02/22/83, DO PASS AYES: 93; NAYS: 4
3RD READING: 02/23/83, DO PASS AYES: 95; NAYS: 4

TRANSMITTED TO SENATE: 02/23/83
REFERRED TO COMMITTEE ON FINANCE & CLAIMS: 3/1/83
HEARING: 3/11/83
REPORT: 03/16/83, BE CONCURRED IN, AS AMENDED
2ND READING: 03/18/83 AYES: 43; NAYS: 4
3RD READING: 03/21/83 AYES: 44; NAYS: 4

RETURNED TO HOUSE WITH AMENDMENTS: 03/21/83
2ND READING: 03/31/83, BE CONCURRED IN AYES: 88; NAYS: 0
3RD READING: 04/01/83, BE CONCURRED IN AYES: 86; NAYS: 0

TRANSMITTED TO GOVERNOR: 04/12/83
SIGNED: 04/15/83, CHAPTER 536

HB 549 -- DOZIER, DRISCOLL, KADAS, ET AL. -- CREATING AN INCOME TAX DEDUCTION FOR
TUITION PAID FOR POSTSECONDARY EDUCATION UP TO A MAXIMUM OF \$400 A STUDENT; LIMITING
THE DEDUCTION TO TAXPAYERS WITH ADJUSTED GROSS INCOME OF LESS THAN \$12,000 IF A JOINT
RETURN IS NOT FILED AND \$15,000 IF A JOINT RETURN IS FILED; AMENDING....

INTRODUCED: 01/28/83

1 *House* BILL NO. *548*
 2 INTRODUCED BY *Mike Baidens & Ramsey*
 3 *Donaldson Bengtson Jack Winkler*
 4 BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE
 5 *AKRESTAD STERNENS E. Smith Goodson*
 6 *Van Valkenburg Haffey George McCallister*
 7 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE,
 8 EXPAND, AND CLARIFY THE LAW PERTAINING TO BUDGET AMENDMENTS;
 9 AMENDING SECTIONS 5-12-401, 5-12-402, 17-8-103, AND
 10 17-8-104, MCA; AND PROVIDING AN EFFECTIVE DATE."
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 NEW SECTION. Section 1. Definitions. As used in
 13 [sections 1 through 5], the following definitions apply:
 14 (1) "Additional services" means different services or
 15 more of the same services.
 16 (2) "Agency" means each state office, department,
 17 division, board, commission, council, committee,
 18 institution, university unit, or other entity or
 19 instrumentality of the executive branch, office of the
 20 judicial branch, or office of the legislative branch of
 21 state government.
 22 (3) "Approving authority" means the governor or his
 23 designated representative for executive branch agencies; the
 24 chief justice of the supreme court for judicial branch
 25 agencies; appropriate legislative committees for legislative
 branch agencies; or the board of regents for the university

1 system.
 2 (4) "Budget amendment" means a legislative
 3 appropriation to increase spending authority for the special
 4 revenue or proprietary funds contingent on total compliance
 5 with all budget amendment procedures.
 6 (5) "Emergency" means any catastrophe, disaster,
 7 calamity, or other equally serious unforeseen and
 8 unanticipated circumstance that has occurred subsequent to
 9 the time an agency's appropriation was made, which was
 10 clearly not within the contemplation of the legislature and
 11 the governor, and which seriously affects one or more
 12 functions of a state agency and the agency's expenditure
 13 requirements for the performance of the function or
 14 functions.
 15 (6) "Executive branch approving authority" means the
 16 governor or his designated representative.
 17 (7) "Necessary" means essential to the public welfare
 18 and of a nature which cannot wait until the next legislative
 19 session for legislative consideration.
 20 (8) "Proposed to and rejected by the legislature"
 21 means a proposal known to the requesting agency, the office
 22 of budget and program planning, the office of the
 23 legislative fiscal analyst, or the approving authority that
 24 was:
 25 (a) made in a bill which was killed;

(b) amended out of a bill prior to final defeat or enactment; or

(c) made to and rejected by any legislative committee or subcommittee.

(9) "Requesting agency" means the agency of state government that has requested a specific budget amendment.

(10) "Special revenue funds" means accounting entities designated with the beginning numbers of 02 and 03 as determined in the treasury fund accounting entity matrix dated December 21, 1982, utilized in the executive budget, 1984-85. Accounting entities beginning with the number 02 are designated "state special revenue or earmarked" entities. Accounting entities beginning with the number 03 are designated "other special revenue" entities.

(11) "University system unit" means the board of regents, office of the commissioner of higher education, university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college at Dillon, the agricultural experiment station with central offices at Bozeman, the forestry and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, or the bureau of mines and geology with central offices at Butte.

NEW SECTION. Section 2. Budget amendment requirements. (1) No budget amendment may be approved:

(a) by the approving authority, except a budget amendment to spend funds which were not available for legislative consideration;

(b) by the approving authority, which contains any ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority, for the expenditure of money in the state earmarked revenue fund unless an emergency justifies such expenditure;

(d) by the approving authority, unless it will provide additional services;

(e) by the approving authority, for additional services which have been proposed to and rejected by the legislature during or since the most recent regular legislative session;

(f) by the approving authority, for any matter of which the requesting agency had knowledge or reasonably should have had knowledge at a time when the proposal could have been presented to the most recent legislative session open to that matter; or

(g) to extend beyond June 30 of the last year of any biennium. All budget amendments shall itemize planned expenditures by fiscal year.

(2) Each budget amendment must be submitted by the approving authority to the budget director and the office of the legislative fiscal analyst.

NEW SECTION. Section 3. Budget amendment certification. In approving a budget amendment, the approving authority shall make the following certifications and in addition shall provide all other information required below as an integral part of the certification:

(1) The approving authority shall certify that:

(a) specific additional services will be provided as a result of the expenditures to be permitted under this budget amendment and shall also list each specific service to be so provided;

(b) the specific services to be provided under this budget amendment are necessary;

(c) the agency requesting this budget amendment has no other alternative available to provide the additional services. Such certification shall specifically include determinations by the approving authority that the agency cannot provide all or specific parts or amounts of the additional services with existing personnel because of the present required workload of existing personnel, or that the agency is unable within its existing funding to fund all or part of such additional services from any source lawfully available to it.

(d) the additional proposed services have not been proposed to and rejected by the legislature during or since the most recent regular legislative session; and

(e) the budget amendment makes no ascertainable present or future commitment for increased general fund support.

(2) The approving authority shall include in its certification the specific criteria by which the effectiveness of the additional services will be evaluated and shall state a specific follow up date on which the written evaluation of such services, using the listed criteria, will be presented to the legislative fiscal analyst. The written evaluation must be presented to the legislative fiscal analyst on or before that date.

(3) For budget amendments to spend money in the state earmarked revenue fund, the approving authority shall certify that an emergency justifies the expenditure and shall state the specific nature of the emergency, the date on which the requesting agency became aware of the emergency, and the manner in which the requesting agency became aware of the emergency.

NEW SECTION. Section 4. Executive branch budget amendment procedures. (1) Upon receiving a proposed budget amendment from a requesting agency, the executive branch approving authority shall immediately forward a copy of the

1 entire budget amendment to the legislative fiscal analyst.

2 (2) If the executive branch approving authority denies
3 the request for a budget amendment, he shall immediately
4 forward a notice of denial to the legislative fiscal
5 analyst.

6 (3) If the executive branch approving authority
7 intends to make certification of the budget amendment,
8 immediately upon his completion of the certification he
9 shall forward the certification and all supporting
10 documentation to the legislative fiscal analyst. The
11 executive branch approving authority may not approve the
12 budget amendment until he receives the legislative finance
13 committee's written report for that budget amendment unless:

14 (a) the report is not received within 90 calendar days
15 from the date the certification and supporting documentation
16 were forwarded to the finance committee, in which case the
17 approving authority may approve the budget amendment; or

18 (b) there has been a waiver of review and report as
19 provided in subsection (6).

20 (4) The legislative fiscal analyst shall review each
21 proposed budget amendment that has been certified by the
22 executive branch approving authority for compliance with
23 statutory budget amendment requirements and standards and
24 shall present a written report of this review to the
25 legislative finance committee. Within 10 days after the

1 meeting of the legislative finance committee that considered
2 the budget amendment, the legislative fiscal analyst shall
3 submit the committee's report to the executive branch
4 approving authority.

5 (5) Upon receipt of the legislative finance
6 committee's written report, the executive branch approving
7 authority may approve or deny the budget amendment or may
8 return the budget amendment to the requesting agency for
9 further information. If the executive branch approving
10 authority has returned the budget amendment to the
11 requesting agency and the requesting agency resubmits the
12 budget amendment to the executive branch approving
13 authority, all procedures set out in this section apply to
14 the resubmitted budget amendment.

15 (6) If an emergency occurs that poses a serious threat
16 to the life, health, or safety of the public, the
17 legislative fiscal analyst may waive his written review and
18 the legislative finance committee's written report required
19 by this section. Upon receipt of such waiver, the executive
20 branch approving authority may approve the budget amendment
21 on completion of his certification. Such a waiver, however,
22 affects only the legislative fiscal analyst's written review
23 and the legislative finance committee's written report on
24 the budget amendment, and all other budget amendment
25 requirements and standards remain in effect. After such a

waiver, the legislative fiscal analyst may complete the written review.

(7) Nothing in [sections 1 through 5] confers any authority on the legislative finance committee to approve or deny budget amendments.

NEW SECTION. Section 5. Voidness of improperly certified budget amendments. Any budget amendment that is not certified by the approving authority according to the standards and procedures set out in [sections 1 through 5] may be declared void in its entirety by a court of competent jurisdiction on complaint of the attorney general, the legislature, or the legislative finance committee. No funds may be expended under an improperly certified budget amendment.

Section 6. Section 5-12-401, MCA, is amended to read:

"5-12-401. Submission of budget amendments to committee. All budget amendments for state agencies must be submitted through the budget director to the legislative finance committee as soon as received by the budget director. No state agency shall expend in excess of the its legislative appropriation except under authority of, which includes a lawfully approved and valid budget amendment."

Section 7. Section 5-12-402, MCA, is amended to read:

"5-12-402. Review by legislative fiscal analyst. The legislative fiscal analyst shall review proposed or approved

~~budget amendments submitted to the committee from the budget director~~ and shall make recommendations to the committee concerning proposed or approved budget amendments."

Section 8. Section 17-8-103, MCA, is amended to read:

"17-8-103. Expenditures in excess of appropriation unlawful. (1) It shall be unlawful for the board of trustees, executive board, managerial staff, president, deans and faculty, or any other authority of any state institution maintained in whole or in part by the state or any officer, department, board, commission, or bureau, having charge of the disbursement or expenditure of the income provided by legislative appropriation or otherwise, to expend, contract for the expenditure, or to incur or permit the incurring of any obligation whatsoever, in any one year, in excess of the legislative appropriation or, including any approved, authorized, and valid budget amendment, provided for such year or for any supervisory board or authority either directly or indirectly to authorize, direct, or order any such institution, officer, department, board, commission, or bureau to increase any expenditures, except as specifically provided by law.

(2) It shall be and is hereby made the duty of any and all of such institutions, officers, departments, boards, commissions, and bureaus to keep such expenditures, obligations, and liabilities within the amount of such

1 legislative appropriation ~~or, which includes an approved,~~
2 ~~authorized, and valid~~ budget amendment."

3 Section 9. Section 17-8-104, MCA, is amended to read:

4 "17-8-104. Penalty Civil and criminal penalties and
5 remedies for violation. (1) (a) Any authority or member of
6 a board of trustees or any person, officer, or employee
7 violating the provisions of 17-8-103 shall be guilty of a
8 misdemeanor and upon conviction thereof shall be punished by
9 a fine of not less than \$50 or more than \$500 or imprisoned
10 by imprisonment in the county jail for not less than 30 days
11 or more than 6 months or by both such fine and
12 imprisonment.

13 (b) Any authority or member of a board of trustees or
14 any person, officer, or employee violating the provisions of
15 17-8-103 is and in addition thereto, said authority, member,
16 person, officer, or employee shall be personally liable and
17 the surety or sureties on his bond shall also be liable to
18 the state for the amount of the excess thus unlawfully
19 expended, upon complaint of the attorney general, of the
20 legislature by joint resolution, of a standing committee of
21 the legislature, or of any taxpayer filed in a district
22 court of this state.

23 (c) Any authority or member of a board of trustees or
24 any person, officer, or employee violating the provisions of
25 17-8-103 is and said authority, member, person, or officer

1 ~~shall be~~ guilty of misfeasance in office, and ~~such--employee~~
2 shall be guilty of wrongdoing, and each shall be subject to
3 removal from office or from such employment, upon complaint
4 of the attorney general, the legislature by joint
5 resolution, a standing committee of the legislature, or of
6 any taxpayer, filed in a district court of this state and
7 upon proof of violation of 17-8-103, in accordance with law.

8 (2) Complaints under subsections (1)(b) and (1)(c) may
9 be combined in a single action.

10 (3) Remedies and penalties provided by this section
11 may be pursued singly or in any combination."

12 NEW SECTION. Section 10. Severability. If a part of
13 this act is invalid, all valid parts that are severable from
14 the invalid part remain in effect. If a part of this act is
15 invalid in one or more of its applications, the part remains
16 in effect in all valid applications that are severable from
17 the invalid applications.

18 NEW SECTION. Section 11. Effective date. This act is
19 effective July 1, 1983.

-End-

ROLL CALL

APPROPRIATIONS

COMMITTEE

LEGISLATIVE SESSION, 19 83

Date FEBRUARY

Name	4	11	16	17	20												
BARDANOUE	✓	✓	✓	✓	✓												
BENGTSON	✓	✓	Abs	✓	✓												
CONNELLY	✓	✓	✓	✓	✓												
DONALDSON	✓	✓	✓	✓	✓												
ERNST	✓	✓	✓	✓	Abs												
HEMSTAD	✓	✓	✓	✓	✓												
LORY	✓	✓	✓	✓	✓												
MANUEL	✓	✓	✓	✓	✓												
MENAHAN	✓	✓	✓	✓	Abs												
PECK	✓	✓	✓	✓	✓												
QUILICI	✓	✓	✓	✓	✓												
ROUSH	✓	✓	Abs	✓	✓												
SHONTZ	✓	✓	✓	✓	✓												
STOBIE	✓	✓	✓	✓	✓												
THOFT	✓	✓	✓	✓	✓												
WALDRON	✓	✓	✓	✓	✓												
WINSLOW	✓	✓	✓	✓	✓												

MINUTES OF THE MEETING OF THE APPROPRIATIONS COMMITTEE
February 17, 1983

The Appropriations Committee met at 7:40 p.m. on February 17, 1983, in Room 104, with Chairman Francis Bardanouve presiding and all members were present. HOUSE BILLS 136, 185, 326, 449, 548 and 694 were heard. EXECUTIVE ACTION was taken on HOUSE BILLS 136, 185, 326 and 449.

(Tape 1: Track 1:1710)

HOUSE BILL 694: "A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE GOVERNOR TO ENTER INTO AGREEMENTS WITH THE STATE OF NORTH DAKOTA AND RELEVANT FEDERAL AGENCIES FOR RENEWAL OF SERVICE OF AMTRAK NORTH COAST HIAWATHA ROUTE SERVICE FROM FARGO TO SPOKANE; PROVIDING AUTHORITY TO ENTER INTO SUCH AGREEMENTS AS PROVIDED IN 45 U.S.C. 563(B); PROVIDING AN APPROPRIATION; AMENDING SECTION 60-11-201, MCA; AND PROVIDING AN EFFECTIVE DATE."

Rep. YARDLEY, the bill's chief sponsor, read a prepared statement. (Exhibit 1.) He said he was proposing an amendment to the bill. (Exhibit 2.) He said, "The amendment deletes the provision that the money is to come from the General Fund and provides that the money is to be taken out of the Earmarked Account, Montana Railways Fuel Use Tax. The Montana Railways Fuel Use Tax is being proposed as House Bill 665 and I have distributed copies of that bill and the fiscal note that's with it." (Exhibit 3.) He then introduced Dick Howell from the Department of Commerce, Transportation Division, to show the basis of the data shown by Rep. Yardley.

DICK HOWELL then distributed a chart titled "AMTRAK SOUTHERN ROUTE DAILY SERVICE" (Exhibit 4.) He said, "The top line on the page which says 'Revenue' is revenue that would be derived from carriers and concessions. The 'Short Term Avoidable Cost' are those costs which would be serious upon discontinuance of the service or incurred upon its introduction... basically that means the operating costs. The 'Short Term Avoidable Loss' is the 'Short Term Avoidable Cost' minus the 'Revenue'. The first year, under the 403-B program, Montana would pay 45% of that cost and the second year they would pay 65% of that cost. The total Montana and North Dakota system would cost \$2,851,700 the first year. AMTRAK also would share in the 'Equipment Capital', so the \$576,000 is an annual recurring cost... mainly lease costs for locomotives, dining lounge and a coach. They would also share in the 'Station Facility' depot cost... we do not have any indicator at this particular time, mainly because we were trying to keep the cost of this system down as much as possible, and therefore we are hoping that cost would be shared with the community... the areas will be able to get 50% discount in the rehabilitation of the people. The total states' share would be \$3,427,700 and Montana and North Dakota have agreed upon a 65%/35% split. Montana's 65% would amount to \$2,228,000 in fiscal year 1983/84; and would amount to \$3,051,800 in fiscal year 1984/85; and North Dakota's 35% would amount to \$1,199,700 in fiscal year 1983/84 and in fiscal year 1984/85 it would amount to \$1,643,300. The 'Short-term avoidable (Loss)

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RAE HAAS, of Haas & Associates, Helena, in charge of auditing Flathead Community College last year, supported the bill.

Opponents: None.

Rep. CONNELLY closed on her bill.

The hearing closed at 8:40 p.m.

(Tape 1: Track 1:2254)

HOUSE BILL 548: "A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE, EXPAND, AND CLARIFY THE LAW PERTAINING TO BUDGET AMENDMENTS; AMENDING SECTIONS 5-12-401, 5-12-402, 17-8-103, AND 17-8-104, MCA; AND PROVIDING AN EFFECTIVE DATE." was heard.

Rep. DONALDSON, in the absence of Rep. MARKS, the bill's chief sponsor, presented the bill. He said this bill came out of the Legislative Finance Committee; and he read from a prepared statement outlining the purpose of the bill. (Exhibit 19.)

Rep. DONALDSON offered the proposed amendment to the existing law. (Exhibit 20.)

Rep. BENGTON left the meeting at this time to return to the House floor.

Proponents:

JOY BRUCK, representing the League of Women Voters of Montana, read from a prepared statement supporting the bill, but had two proposed amendments. (Exhibit 21.)

Opponents:

MONA JAMISON, legal counsel to Governor Schwinden, said, "I'm here tonight to testify in opposition to HB 548. There are two provisions we believe are unconstitutional and a definition we think needs further clarification. I will first begin by discussing what we believe to be the unconstitutional provisions.

I would ask you to look at the definition under Section 1 (8) on page 2, line 20, which is the definition for 'Proposed to and rejected by the legislature'. This particular provision is utilized in the budget amendment requirement, Section 2 (e) and in the budget amendment certification process set forth in 3 (d). This definition states, 'means a proposal known to the requesting agency, the office of budget and program planning, the office of the legislative fiscal analyst or the approving authority that was (a) made in a bill which was killed; (b) amended out of a bill prior to final defeat or enactment; or (c) made to and rejected by any legislative committee or subcommittee.' This particular provision elevates rejection of a bill or of an amendment to the status of a bill... of a law actually passed by the

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Legislature. In this provision, legislative inaction becomes as binding as legislative action to passing a law. The only vehicle under the Constitution that can have a binding effect on an agency - or any branch of government, for that matter - is the bill which is passed by the majority of the Legislature. This particular provision prevents the executive or judicial branch from approving a budget amendment on anything that was killed in a bill, amended out of a bill, or judged by any legislative subcommittee. In other words, legislative inaction - or failure to pass a particular provision - is now binding and elevated to that status of a bill. The Constitution is very clear that it takes a majority of the legislators through a bill, through the law-making process, to bind a party. That's our legal concern with that particular provision. There are practical concerns too. There is no codification of inaction as there is on a bill. We have no reference material to which we can refer to tell us which bills were killed, but, more precisely, which amendments were killed, or which proposals were rejected by a committee. As we go from bills being killed, it gets more and more complex to determine which proposals were killed by a committee. As we all know, from the different committees that I attend or that you participate in, sometimes the reason a bill is killed has absolutely nothing to do with the merits of the bill - it may have to do with some procedural aspect, or another bill being introduced that's similar that may or may not include a provision in the bill that is finally rejected by the Legislature. So here - even when a decision that is not all that intentional in terms of a particular provision in a bill that is killed or amended out - all of a sudden is elevated to a binding action by this particular bill. We believe that without a codification of inaction - in other words, a volume telling us that amendment on this Section (8) on a particular bill was killed for a particular reason - we would have absolutely no way of determining why and which bills were killed.

There is also a problem with the use of the word 'known' in line 21. It says, 'means a proposal known to the requesting agency, the OBPP or the LFA'. What's interesting is that if any one of these entities knows of a bill or a proposal or an amendment being rejected, then this particular provision is triggered and it becomes utilized in the budget amendment certification process and, if this is discovered, then no budget amendment will be able to be acted on for that particular provision. What's interesting, on the other hand, is that a particular proposal or amendment was rejected by the Legislature and no one remembers, then there can be a budget amendment on it, which is interesting... that's a very innovative way of having to determine what was killed and what wasn't... sheer memory, which in our opinion is really a little bit, to say the least, arbitrary in such a determination that can have major impact on the various programs within the state.

I will ask you now to go to Section 9 (1), which is on page 11 of the

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bill, lines 19 through 22. With the amendment which Rep. Donaldson pointed out, this section would read, 'An action under this subsection may be brought upon complaint of the attorney general, of the legislature by joint resolution, of a standing committee of the legislature'. I concede the issues resolved by the Judge case are not raised in this, in fact this bill is not giving the Legislative Finance Committee the authority to approve or disapprove budget amendments; however, what we have here is still an unlawful delegation that I believe is still addressed by the Judge case. A standing committee of a Legislature can go into court and challenge the validity of the certification process. What this particular provision is allowing is a standing committee to make a determination that really belongs to the entire Legislature... has this agency properly or improperly certified for the budget amendment? So eventhough the Judge case - the point at issue in that case on the approval authority of the Legislative Finance Committee - was not raised in this bill, it surfaces with a different face. In this particular case, the finance committee or any other standing committee would have the authority to act on behalf of the remainder of the Legislature, go into court and challenge this, and it's that particular provision that we also believe raises an unconstitutional issue.

The last thing I refer your attention to is the definition in Section 1 (5), 'emergency'. We feel it's necessary that this definition should address situations which prevent state government from complying with the law due to the level of appropriation. In fact, it may constitute an emergency not only to an agency, but more significantly to the persons who are recipients of different programs. We would ask you to reconsider your definition of 'emergency'."

DAVE LEWIS said he would like to address what he considers the major effect of the bill. The certification the approving authority has to make when he or she does the budget amendment encompasses the term "necessary", (Page 5, line 15). He said, "'Necessary' is really in the eye of the beholder. Page 5, line 16 says, 'The agency requesting this budget amendment has no other alternative available'... again, the approving authority has to sign a certification saying there is no other alternative. This is really an impossible task because there is no way of certifying that... there are always other alternatives. I object to the same thing Mona Jamison objected to on Page 2, line 1 regarding 'the additional proposed services have not been proposed to and rejected by the legislature'. Page 2, line 4, 'the budget amendment makes no ascertainable present or future commitment for increased general fund support' is an almost impossible certification. If someone challenges that certification, it goes to a court, and the court were to determine there was some ascertainable commitment for increased General Fund support, it had been proposed and rejected by the Legislature, or there was an alternative available, this process could have passed over some months and some money could have been

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expended under that budget amendment. At that point, you have violated Section 17-8-103 and the approving authority is liable for a whole series of civil or criminal penalties. I think the major effect of the bill is to eliminate budget amendments."

JACK NOBLE, Deputy Commissioner for Management and Finance of the University System, said, "Currently the Legislature only appropriates the current unrestricted education and General portion for higher education. In the appropriation act, reference is made to 'all funds other than plant funds and those specifically appropriated herein may be spent and are appropriated and continued on approval of the Board of Regents by July 1 of each year of a comprehensive program budget containing detailed revenue and expenditures of anticipated fund balances of current funds, loan funds and endowment funds'. If this bill is passed, there are approximately 800 accounting entities covered in the process in this bill. He said they had over 600 budget amendments last year... most in the areas like vending machine accounts, etc... so many, in fact, that the Board of Regents only assumes authority for those funds specifically appropriated and the rest flow through the office. We would be literally shot down if we had to wait 30 to 90 days to lift an account in the vending machine area. We do have the concern of work load and we do not think there would be a realistic application of the bill."

Rep. BARDANOUE said, "I didn't know this was so broad. Mrs. Rippingale, would you clarify some of this?" JUDY RIPPINGALE said, "Mr. Chairman, I think it is courteous of Mr. Noble to bring this to our attention because the University has no special revenue or proprietary funds, so we've probably made an error in totaling up the amount of the budget amendment bill and should probably put some of the University funds in this definition because these are not University definitions, so we would probably need to include some of the University funds, which I think probably through an oversight didn't get included in the first place... but I think now we can probably take care of it."

JUDY RIPPINGALE said, "For the legal aspects of this bill, we have Lee Heiman from the Legislative Council. LEE HEIMAN said, "The three parts of the penalties are existing law."

RAY HOFFMAN, Department of Health & Environmental Science, opposed the bill.

DENNIS HEMMER, Department of State Lands, opposed the bill. (Exhibit 22.

(Tape 2: Track 1:117)

BOB ROBINSON, Department of Natural Resources and Conservation, opposed the bill.

BRYAN MC CULLOUGH, Department of Commerce, opposed the bill.

Minutes of the meeting of the Appropriations Committee
February 17, 1983

Rep. DONALDSON closed on the bill.

Discussion:

Rep. WALDRON and Rep. DONALDSON had a brief dialogue on what constitutes an "emergency".

Rep. WALDRON then said, "On page 10, lines 15, 16 and 17, does that mean you can't expend more than what's in your appropriation plus the budget amendment?" JUDY RIPPINGALE said, "That is to clarify that your legislative appropriation includes any approved budget amendments. Once a budget amendment has gone through the process of certification, then you have given it legislative approval."

Rep. WALDRON asked Mona Jamison if Standing Committees can now request an opinion by the Attorney General? MONA JAMISON replied, "Legislative can ask opinions by the Attorney General - the statutes allow that; however, in terms of Standing Committees actually going into court, that has not been allowed...individual legislators would have to. The taxpayer, historically, is the person the courts have recognized at both the federal and state level as having the authority to challenge appropriation and taxation measures; but Standing Committees as a whole, we submit do not have that authority."

The hearing closed at 9:45 p.m.

Rep. WALDRON assumed the chair, as the next bill is sponsored by Rep. BARDANOUE.

(Tape 2: Track 1:213)

HOUSE BILL 449: "A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE TIME LIMIT ON INTERACCOUNT LOANS; AMENDING SECTION 17-2-107, MCA; AND PROVIDING AN EFFECTIVE DATE." was heard.

Rep. BARDANOUE, the bill's sponsor, said the Department of Administration had asked him to sponsor the bill and he asked Morris Bruset to speak on the bill.

MORRIS BRUSETT, Director of the Department of Administration, said, "Since I have been in my present position, I have found there are loans that have been made from General Fund and other accounts which have gone past year-end. We did a 2 1/2 year analysis so we could get a feel for the problem, and there are still occasions when you can't pay the money back by year-end. Our purpose was to bring this to the attention of Rep. Bardanoue so that we could get the matter corrected so that we don't make any more loans or we get legislative approval to go past year-end in certain occasions. The bill was written in very general terms and I offer an amendment to clarify the bill, which was prepared by the Legislative Fiscal Analyst. (Exhibit 23.)

JUDY RIPPINGALE explained the amendments. She said, "In terms of

HOUSE BILL 548 - Budget Amendment

The purpose of House Bill 548 is to:

(1) clarify and better define the budget amendment criteria which have been included in the boiler plate of the omnibus appropriation bill for the past three regular sessions;

(2) specify procedures for review so the Legislative Finance Committee has the opportunity to see and comment on a budget amendment before it is approved by the approving authority; and,

(3) separate the civil and criminal penalties so they could be sought singly rather than having to be joined in one action.

The Legislative Finance Committee had an attorney analyze the budget amendment laws. She recommended against any litigation at the time because of numerous enforcement and remedy problems such as vagueness of statutory provisions, questions as to appropriateness of remedy, and because present budget amendment approval and distribution procedures do not permit quick enough filing. Given the closeness of the next session, she advised the committee to redraft the statutes to improve the basis for litigation, and perhaps to avoid its necessity.

The specific changes are:

(1) Defining terms such as "additional services", "budget amendment", "emergency", "necessary", "proposed to", and "rejected by the legislature".

(2) Redrafting of existing budget amendment criteria and certification requirements for clarification and less ambiguity in interpretation.

(3) Defining a specific budget amendment procedure for the executive branch. This procedure was defined so the Legislative Finance Committee would see the budget amendment prior to its approval and have all supporting documentation available for review.

Under this procedure the finance committee is provided the opportunity to convey any concerns to the approving authority prior to the budget amendment approval. These procedures which allow the Legislative Finance Committee to comment do not confer any authority to the committee to approve or deny budget amendments.

Legal enforcement provisions have been made more timely and clarified. They are more timely as the committee is aware of the contemplated action prior to approval of the budget amendment. They have been clarified by adding a voidness provision and separating the legal penalties. The voidness provision clearly states that an improperly certified budget amendment may be declared void by a court on complaint of the Attorney General, the legislature, or the Legislative Finance Committee. Present civil and criminal penalties and remedies already in law for violations are separated so that both types of penalties may be pursued separately rather than together.

PROPOSED AMENDMENT TO HOUSE BILL 548

House Bill 548 be amended as follows:

1. Page 3.

Following: line 6

Strike: Subsection (10) in its entirety.

Renumber: subsequent subsections

2. Page 11, line 19.

Following: "expended"

Strike: ", "

Insert: ". An action under this subsection (b) may be brought"

3. Page 12, line 3.

Following: "employment"

Strike: ", "

Insert: ". An action under this subsection (c) may be brought"

HB 548

Budget Amendments

Over the past four years, the League of Women Voters of Montana has studied state government financing, taken consensus, and now have a position on which we can take action. With this new position, we can and do support HB 548. However, we believe there are a couple of things that should be looked at before action is taken.

During our study, one area we reviewed was the budget amendment process and did come to the conclusion that this process is needed pretty much in its present form; particularly when there is a 21-month span between regular sessions. However, we also recognized the opportunities for abuse of the process, and therefore, our members also concluded that there is a need for strong statutory criteria and more legislative oversight of the process; this bill certainly seems to meet our concerns. but we do hope that it will be interpreted so as not to completely hamstring the executive because of undue control ~~by~~ the legislative branch.

On page 4, lines 19-20, we do question the relevancy of "the requesting agency had knowledge or reasonably should have had knowledge...etc."how does one determine "reasonably should have had knowledge" - or, can it even be determined?

Finally, we don't oppose the penalty section of the bill because we do feel there certainly should be some recourse and discipline for spending in excess of an authorized appropriation, but we were surprised by the degree of severity.

Again, we strongly support this bill and hope you will give it a "do pass" after considering our concerns, of course.

Joy Bruck
League of Women Voters of Montana

DEPARTMENT OF STATE LAND'S TESTIMONY ON
HOUSE BILL 548
BEFORE THE HOUSE APPROPRIATIONS COMMITTEE

We have submitted nine budget amendments for the current fiscal year. The total dollar value of the Department's budget amendments for this year is \$3,841,584. Of that total 3.5 million was attributable to the preparation of Environmental Impact Statements by the Department EIS Team. The funds for the preparation of these statements come primarily from the mining industry. They contract with the Department to prepare studies on proposed mine sites. Some of the work is done by the EIS staff, but the majority is contracted out to consulting firms and the Department reviews and comments on the final draft.

It is very difficult for us to forecast how many mines will be proposed in any given fiscal year.

For example, the legislative appropriation for the EIS Team in FY82 was approximately \$252,000, ^{our best estimate} but we actually spent \$2,834,000.

I will site the specific sections of House Bill 548 that I think will cause us problems.

1. Section 1, Paragraph (7) on page 2 defines necessary as "essential to the public welfare and of a nature which cannot wait the next legislative session for legislative consideration."

Is requesting spending authority so that the DSL EIS Team can prepare an impact statement for a proposed mine "essential to the public welfare?"

I have a problem with this because doing an EIS for a proposed mine site may not be essential to the public welfare. However, the company that is proposing to start a mining operation is vitally interested in meeting the legal requirements in a timely manner.

There should be some language added to this section to clarify "necessary".

2. Section 2 paragraph (C) on page 4 disallows budget amendments in an earmarked revenue fund unless an emergency exists.

Monies received from industry to prepare impact statements are earmarked funds as defined by the Treasury Fund Structure Act. If a mining company decides to operate a mine we are required by law to respond to their request within a certain time frame. Would preparing an EIS for a mining company qualify as an emergency under paragraph (C) and meet the "necessary" language in Section 1, paragraph (7)? I suggest that the word emergency be more clearly defined. Preparing an EIS doesn't seem to be an emergency, but to a mining company that wants to open a mine, it is important that the studies that are required by law are done in a timely manner. The emergency language also appears in Section 3, C, 3, page 6 and also needs to be clarified as to what constitutes an emergency.

3. Section ~~4~~, 3, A, on page 7 gives the Fiscal Analyst 90 days (3 months) to determine if the proposed budget amendment is proper. Section 5, (5) gives the Fiscal Analyst another 90 days, or a total of 6 months, to make a determination on the correctness of a particular budget amendment. This is a long time for us to wait for a decision on a budget amendment.

We can't wait 3 or 6 months before starting an assessment on a proposed mining operation. I suggest that these time frames be reviewed so that we can do our work in a timely manner.

Section 4(6) states in part, "...If an emergency occurs that poses a serious threat to the life, health or safety of the public, the fiscal analyst may waive his written review ...". If this section defines what "emergency" means, the Budget Director couldn't approve a budget amendment to prepare an EIS for a proposed mine.

I would urge the committee to vote do not pass on this bill, or at least amend it to provide a workable system.

VISITORS' REGISTER

HOUSE APPROPRIATIONS COMMITTEE

BILL HOUSE BILL 548

Note: ↓

Date FEBRUARY 17, 198

SPONSOR MARKS

GENERALLY REVISE, EXPAND, AND CLARIFY
THE LAW PERTAINING TO BUDGET
AMENDMENTS.

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF THE MEETING OF THE APPROPRIATIONS COMMITTEE
February 20, 1983

The Appropriations Committee met at 1:35 p.m. on February 20, 1983, in Room 140, with Chairman Francis Bardanouve presiding and all members were present. Judy Rippingale, Legislative Fiscal Analyst, was also present. HOUSE BILLS 659, 681, 772, 778, 805, 861 and 862 were heard. EXECUTIVE ACTION was taken on HOUSE BILLS 548, 681, 659, 772, 778, 805 and 862. HOUSE BILLS 237 and 413 were TABLED. Rep. DONALDSON said he would move on the House floor to take HOUSE BILL 105 from committee and move it to the House floor.

(Tape 2: Track 1:405)

HOUSE BILL 659: "A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR STATE USE AND DISTRIBUTION OF FEDERAL COMMUNITY SERVICES BLOCK GRANT FUNDS; DEFINING 'HUMAN RESOURCE DEVELOPMENT COUNCIL'; PROVIDING FOR THE ADMINISTRATION OF FISCAL AND PROGRAM CONTROLS TO COMPLY WITH FEDERAL LAW; AND PROVIDING AN EFFECTIVE DATE." was heard.

Rep. J. JENSEN presented his bill.

Proponents:

JIM SMITH, employed by the Region VIII Unity Action Association, which is a trade association consisting of Community Action agencies in 6 Western states and includes the Human Resource Development Councils in Montana, offered a fact sheet on House Bill 659. (Exhibit 1.) He said, "This block grant is not included in the Administration's original budget package (at the federal level); however, it has achieved support from Congress. For the last two years since 1980, Congress has appropriated approximately 350 million dollars annually for this block grant - to Montana, approximately 1.2 million dollars per year. There are discussions in Washington right now which might lead to a supplemental appropriation for this block grant during the remainder of this year. I feel that continued federal funding for this program is relatively stable at this time."

BOB WALTMIRE, Columbia Falls, and Senior Citizens' representative, supported the bill.

GERTRUDE DOWNY, HRDC XII, Butte, read a letter from Don Peoples supporting the bill. (Exhibit 2.)

CARL J. DONOVAL, Great Falls, representing Montana's Coalition Against Poverty (MCAP), presented a large stack of petitions containing 1,640 signatures, supporting the bill.

MARY NOONAN, St. Regis, representing the Mineral County Commissioners, read a prepared statement supporting the bill. (Exhibit 3.)

ROSE GOSS, representing Ravalli County Commissioners, read a prepared statement supporting the bill. (Exhibit 4.)

EDGAR LANGSTON, HRDC, Harlowton, read a prepared statement supporting the bill. (Exhibit 5.)

Minutes of the meeting of the Appropriations Committee
February 20, 1983

Discussion:

Reps. STOBIE, WALDRON, QUILICI, WINSLOW, MENAHAN and CURT CHISHOLM discussed the nuances of the bill on prisoners, their ability to pay, implementation problems and what other states are doing in implementing similar legislation.

The hearing closed at 4:02 p.m.

(Tape 2: Track 1:1508)

HOUSE BILL 861: "A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT CERTAIN PAYMENTS FROM THE GASOLINE AND VEHICLE FUELS TAX AND THE PUBLIC TRANSPORTATION PROGRAM BE PAID BY THE DEPARTMENT OF HIGHWAYS RATHER THAN THE STATE TREASURER; AMENDING SECTIONS 7-14-102 AND 15-70-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." was heard.

Rep. QUILICI introduced his bill. This is a bill requested by the Committee on Appropriations. He said there would be no more administrative money involved.

Proponents: None.

Opponents: None

Rep. QUILICI closed on his bill.

Discussion: None.

The hearing closed at 4:05 p.m.

(Tape 2: Track 1:1531)

***EXECUTIVE ACTION:

HOUSE BILL 548: "A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE, EXPAND, AND CLARIFY THE LAW PERTAINING TO BUDGET AMENDMENTS; AMENDING SECTIONS 5-12-401, 5-12-402, 17-8-103, AND 17-8-104, MCA: AND PROVIDING AN EFFECTIVE DATE."

Rep. MARKS had Rep. DONALDSON present proposed amendments to the bill. (Exhibit 13.) (Note: Also see Standing Committee Report in the Minute Book.)

Rep. DONALDSON made a motion to approve the #1 amendment on Exhibit 13. The motion was seconded and passed unanimously.

Rep. DONALDSON made a motion to approve the #2 and #3 amendments on Exhibit 13. The motion was seconded and passed unanimously.

Rep. DONALDSON then presented some further amendments to the bill. (Exhibit 14.) (Note: Also see Standing Committee Report in the Minute Book.)

Rep. DONALDSON made a motion that amendment #1 on Exhibit 14 be approved. The motion was seconded and passed unanimously.

Minutes of the meeting of the Appropriations Committee
February 20, 1983

Rep. DONALDSON made a motion that the #2, #3 and #4 amendments on Exhibit 14 be approved. The motion was seconded and passed, with Rep. MENAHAN voting "No" and saying he thought the whole bill was not a good bill.

Rep. DONALDSON made a motion that amendment #5 on Exhibit 14 be approved.

There was considerable discussion on the various funds, where they originate, which ones are appropriated and which are not, House Bill 500 boiler plate language, and the budget amendment process.

Rep. DONALDSON made a substitute motion that amendment #5 on Exhibit 14 be changed as follows: "Strike everything after 'unrestricted subfund'. The motion was seconded and passed unanimously.

Rep. WALDRON made a motion that on Page 5, line 16 of the bill, after the word "other", insert the word "reasonable". The motion was seconded and passed, with Reps. MENAHAN and LORY voting "No".

Rep. BENGTON made a motion that House Bill 548 as amended do pass. Rep. SHONTZ seconded the motion and the motion passed, with Reps. MENAHAN and LORY voting "No".

(Tape 2: Track 1:1836)

HOUSE BILL 861: "A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT CERTAIN PAYMENTS FROM THE GASOLINE AND VEHICLE FUELS TAX AND THE PUBLIC TRANSPORTATION PROGRAM BE PAID BY THE DEPARTMENT OF HIGHWAYS RATHER THAN THE STATE TREASURER; AMENDING SECTIONS 7-14-102 AND 15-70-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Rep. QUILICI made a motion that the bill do pass. The motion was seconded and passed unanimously.

(Tape 2:Track 1:1844)

HOUSE BILL 681: "A BILL FOR AN ACT ENTITLED: "AN ACT TO PREVENT THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES FROM REFUSING MEDICAL PAYMENTS FOR ELIGIBLE INDIVIDUALS TREATED IN HOSPITAL BEDS THAT CAN ALSO SERVE AS NURSING HOME BEDS; AMENDING SECTION 53-6-102, MCA."

Rep. STOBIE made a motion that the bill do pass.

Rep. WALDRON made a substitute motion that the bill do not pass. A roll call vote was taken. There were 11 members who voted "No" and 6 who voted "Yes". The motion failed.

The votes were reversed and the motion was that the bill do pass. A roll call vote was taken and there were 11 who voted "Yes" and 6 who voted "No". House Bill 681 passed.

PROPOSED AMENDMENT TO HOUSE BILL 548

House Bill 548 be amended as follows:

1. Page 3.

Following: line 6

Strike: Subsection (10) in its entirety.

Renumber: subsequent subsections

2. Page 11, line 19.

Following: "expended"

Strike: ", "

Insert: ". An action under this subsection (b) may be brought"

3. Page 12, line 3.

Following: "employment"

Strike: ", "

Insert: ". An action under this subsection (c) may be brought"

H.B. 548

Recommendations:

1. page 2, line 7

Following ~~the~~ "other"

STRIKE "equally"

2. page 2, line 20

STRIKE "line 20 through page 3 line 4"

3. page 4, line 14

STRIKE "line 14 through line 17"

Restructure subsequent sections

4. page 6, line 1

STRIKE "line 1 through line 3"

Restructure subsequent sections

5. page 7, line 4

Following ~~the~~ "revenue"

STRIKE "as"

Insert "fund,"

Following "promoting fund"

Insert: ", unrestricted subfund, designated subfund, or
university direct fund"

STANDING COMMITTEE REPORT

FEBRUARY 20,

83

19.....

SPEAKER

MR.

APPROPRIATIONS

We, your committee on

House

having had under consideration Bill No. 548

First reading copy (White)

color

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE, EXPAND, AND CLARIFY THE LAW PERTAINING TO BUDGET AMENDMENTS; AMENDING SECTIONS 5-12-401, 5-12-402, 17-8-103, AND 17-8-104, MCA; AND PROVIDING AN EFFECTIVE DATE."

House

548

Respectfully report as follows: That..... Bill No.

BE AMENDED AS FOLLOWS:

1. Page 2, line 4.

Following: "revenue"

Strike: "or"

Insert: "fund,"

Following: "proprietary funds"

Insert: ", or unrestricted subfund"

2. Page 2, line 7.

Following: "other"

Strike: "equally"

3. Page 2, lines 20 through line 4 of page 3.

Strike: Subsection (8) in its entirety.

Renumber subsequent subsections

XXXXXX
DO PASS

FRANCIS BARDANOUVE

Chairman.

STATE PUB. CO.
Helena, Mont.

COMMITTEE SECRETARY

February 20, 1983

4. Page 3, lines 7 through 14.
Strike: Subsection (10) in its entirety.
Renumber subsequent subsections

5. Page 4, lines 14 through 17.
Strike: Subsection (e) in its entirety.
Renumber subsequent subsections

6. Page 5, line 7.
Following: "other"
Insert: "reasonable"

7. Page 5, line 25.
Following: "it"
Strike: "."
Insert: "; and"

8. Page 6, lines 1 through 3.
Strike: Subsection (d) in its entirety
Reletter subsequent subsection

9. Page 11, line 19.
Following: "expended"
Strike: ", "
Insert: ". An action under this subsection (b) may be brought"

10. Page 12, line 3.
Following: "employment"
Strike: ", "
Insert: ". An action under this subsection (c) may be brought"

AND AS AMENDED
DO PASS

1 HOUSE BILL NO. 548

2 INTRODUCED BY MARKS, BARDANOUVE,

3 RAMIREZ, DONALDSON, BENGTON, PECK, WINSLOW,

4 AKLESTAD, STEPHENS, E. SMITH, GODDOVER,

5 VAN VALKENBURG, HAFLEY, MCCALLUM

6 BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE

7
8 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE,
9 EXPAND, AND CLARIFY THE LAW PERTAINING TO BUDGET AMENDMENTS;
10 AMENDING SECTIONS 5-12-401, 5-12-402, 17-8-103, AND
11 17-8-104, MCA; AND PROVIDING AN EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 ~~NEW SECTION.~~ Section 1. Definitions. As used in
15 [sections 1 through 5], the following definitions apply:

16 (1) "Additional services" means different services or
17 more of the same services.

18 (2) "Agency" means each state office, department,
19 division, board, commission, council, committee,
20 institution, university unit, or other entity or
21 instrumentality of the executive branch, office of the
22 judicial branch, or office of the legislative branch of
23 state government.

24 (3) "Approving authority" means the governor or his
25 designated representative for executive branch agencies; the

THIRD READING

There are no changes in HB548, and due to length will not
be rerun. Please refer to yellow copy for complete text.

Approved by Comm.
on Appropriations

HOUSE BILL NO. 548

INTRODUCED BY MARKS, BARDANOUVE,

RAMIREZ, DONALDSON, BENGTSON, PECK, WINSLOW,

AKLESTAD, STEPHENS, E. SMITH, GOODOVER,

VAN VALKENBURG, HAFEEY, MCCALLUM

BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE,
EXPAND, AND CLARIFY THE LAW PERTAINING TO BUDGET AMENDMENTS;
AMENDING SECTIONS 5-12-401, 5-12-402, 17-8-103, AND
17-8-104, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION.~~ Section 1. Definitions. As used in
[sections 1 through 5], the following definitions apply:

(1) "Additional services" means different services or
more of the same services.

(2) "Agency" means each state office, department,
division, board, commission, council, committee,
institution, university unit, or other entity or
instrumentality of the executive branch, office of the
judicial branch, or office of the legislative branch of
state government.

(3) "Approving authority" means the governor or his
designated representative for executive branch agencies; the

chief justice of the supreme court for judicial branch
agencies; appropriate legislative committees for legislative
branch agencies; or the board of regents for the university
system.

(4) "Budget amendment" means a legislative
appropriation to increase spending authority for the special
revenue or ~~FUND~~, proprietary funds, ~~OR UNRESTRICTED SUBFUND~~
contingent on total compliance with all budget amendment
procedures.

(5) "Emergency" means any catastrophe, disaster,
calamity, or other ~~equally~~ serious unforeseen and
unanticipated circumstance that has occurred subsequent to
the time an agency's appropriation was made, which was
clearly not within the contemplation of the legislature and
the governor, and which seriously affects one or more
functions of a state agency and the agency's expenditure
requirements for the performance of the function or
functions.

(6) "Executive branch approving authority" means the
governor or his designated representative.

(7) "Necessary" means essential to the public welfare
and of a nature which cannot wait until the next legislative
session for legislative consideration.

~~(8) --"Proposed--to--and--rejected--by--the--legislature"--~~
~~means--a--proposal--known--to--the--requesting--agency--the--office~~

1 of---budget---and---program---planning,---the---office---of---the
2 legislative-fiscal-analyst, or the approving authority---that
3 was:

4 (a)---made-in-a-bill-which-was-killed;

5 (b)---amended-out-of-a-bill-prior-to-final-defeat-or
6 enactments-or

7 (c)---made-to-and-rejected-by-any-legislative-committee
8 or-subcommittees;

9 (f)(1) "Requesting agency" means the agency of state
10 government that has requested a specific budget amendment.

11 (f)(2) "Special revenue funds" means accounting entities
12 designated-with-the-beginning-numbers-of-02-and-03-as
13 determined-in-the-treasury-fund-accounting-entity-matrix
14 dated-December-21-1982-utilized-in-the-executive-budget
15 1984-85. Accounting entities beginning with the number 02
16 are-designated-"state-special-revenue-or-earmarked"
17 entities. Accounting entities beginning with the number 03
18 are-designated-"other-special-revenue" entities.

19 (f)(3) "University system unit" means the board of
20 regents, office of the commissioner of higher education,
21 university of Montana at Missoula, Montana state university
22 at Bozeman, Montana college of mineral science and
23 technology at Butte, eastern Montana college at Billings,
24 northern Montana college at Havre, western Montana college
25 at Dillon, the agricultural experiment station with central

1 offices at Bozeman, the forestry and conservation experiment
2 station with central offices at Missoula, the cooperative
3 extension service with central offices at Bozeman, or the
4 bureau of mines and geology with central offices at Butte.

5 NEW SECTION. Section 2. Budget amendment
6 requirements. (1) No budget amendment may be approved:
7 (a) by the approving authority, except a budget
8 amendment to spend funds which were not available for
9 legislative consideration;

10 (b) by the approving authority, which contains any
11 ascertainable commitment for any present or future increased
12 general fund support;

13 (c) by the approving authority, for the expenditure of
14 money in the state earmarked revenue fund unless an
15 emergency justifies such expenditure;

16 (d) by the approving authority, unless it will provide
17 additional services;

18 (e)---by-the-approving-authority,---for---additional
19 services---which---have---been---proposed-to-and-rejected-by-the
20 legislature---during---or---since---the---most---recent---regular
21 legislative-session;

22 (f)(4) by the approving authority, for any matter of
23 which the requesting agency had knowledge or reasonably
24 should have had knowledge at a time when the proposal could
25 have been presented to the most recent legislative session

1 open to that matter; or

2 ~~{g}{f}~~ to extend beyond June 30 of the last year of
3 any biennium. All budget amendments shall itemize planned
4 expenditures by fiscal year.

5 (2) Each budget amendment must be submitted by the
6 approving authority to the budget director and the office of
7 the legislative fiscal analyst.

8 ~~NEW SECTION.~~ Section 3. Budget amendment
9 certification. In approving a budget amendment, the
10 approving authority shall make the following certifications
11 and in addition shall provide all other ~~REASONABLE~~
12 information required below as an integral part of the
13 certification:

14 (1) The approving authority shall certify that:

15 (a) specific additional services will be provided as a
16 result of the expenditures to be permitted under this budget
17 amendment and shall also list each specific service to be so
18 provided;

19 (b) the specific services to be provided under this
20 budget amendment are necessary;

21 (c) the agency requesting this budget amendment has no
22 other alternative available to provide the additional
23 services. Such certification shall specifically include
24 determinations by the approving authority that the agency
25 cannot provide all or specific parts or amounts of the

1 additional services with existing personnel because of the
2 present required workload of existing personnel, or that the
3 agency is unable within its existing funding to fund all or
4 part of such additional services from any source lawfully
5 available to it.

6 ~~{d}--the--additional--proposed--services--have--not--been~~
7 ~~proposed-to-and-rejected-by-the-legislature-during-or--since~~
8 ~~the-most-recent-regular-legislative-session--and~~

9 ~~{e}{f}~~ the budget amendment makes no ascertainable
10 present or future commitment for increased general fund
11 support.

12 (2) The approving authority shall include in its
13 certification the specific criteria by which the
14 effectiveness of the additional services will be evaluated
15 and shall state a specific follow up date on which the
16 written evaluation of such services, using the listed
17 criteria, will be presented to the legislative fiscal
18 analyst. The written evaluation must be presented to the
19 legislative fiscal analyst on or before that date.

20 (3) For budget amendments to spend money in the state
21 earmarked revenue fund, the approving authority shall
22 certify that an emergency justifies the expenditure and
23 shall state the specific nature of the emergency, the date
24 on which the requesting agency became aware of the
25 emergency, and the manner in which the requesting agency

1 became aware of the emergency.

2 ~~NEW SECTION.~~ Section 4. Executive branch budget
3 amendment procedures. (1) Upon receiving a proposed budget
4 amendment from a requesting agency, the executive branch
5 approving authority shall immediately forward a copy of the
6 entire budget amendment to the legislative fiscal analyst.

7 (2) If the executive branch approving authority denies
8 the request for a budget amendment, he shall immediately
9 forward a notice of denial to the legislative fiscal
10 analyst.

11 (3) If the executive branch approving authority
12 intends to make certification of the budget amendment,
13 immediately upon his completion of the certification he
14 shall forward the certification and all supporting
15 documentation to the legislative fiscal analyst. The
16 executive branch approving authority may not approve the
17 budget amendment until he receives the legislative finance
18 committee's written report for that budget amendment unless:

19 (a) the report is not received within 90 calendar days
20 from the date the certification and supporting documentation
21 were forwarded to the finance committee, in which case the
22 approving authority may approve the budget amendment; or

23 (b) there has been a waiver of review and report as
24 provided in subsection (6).

25 (4) The legislative fiscal analyst shall review each

1 proposed budget amendment that has been certified by the
2 executive branch approving authority for compliance with
3 statutory budget amendment requirements and standards and
4 shall present a written report of this review to the
5 legislative finance committee. Within 10 days after the
6 meeting of the legislative finance committee that considered
7 the budget amendment, the legislative fiscal analyst shall
8 submit the committee's report to the executive branch
9 approving authority.

10 (5) Upon receipt of the legislative finance
11 committee's written report, the executive branch approving
12 authority may approve or deny the budget amendment or may
13 return the budget amendment to the requesting agency for
14 further information. If the executive branch approving
15 authority has returned the budget amendment to the
16 requesting agency and the requesting agency resubmits the
17 budget amendment to the executive branch approving
18 authority, all procedures set out in this section apply to
19 the resubmitted budget amendment.

20 (6) If an emergency occurs that poses a serious threat
21 to the life, health, or safety of the public, the
22 legislative fiscal analyst may waive his written review and
23 the legislative finance committee's written report required
24 by this section. Upon receipt of such waiver, the executive
25 branch approving authority may approve the budget amendment

on completion of his certification. Such a waiver, however, affects only the legislative fiscal analyst's written review and the legislative finance committee's written report on the budget amendment, and all other budget amendment requirements and standards remain in effect. After such a waiver, the legislative fiscal analyst may complete the written review.

(7) Nothing in [sections 1 through 5] confers any authority on the legislative finance committee to approve or deny budget amendments.

NEW SECTION. Section 5. Voidness of improperly certified budget amendments. Any budget amendment that is not certified by the approving authority according to the standards and procedures set out in [sections 1 through 5] may be declared void in its entirety by a court of competent jurisdiction on complaint of the attorney general, the legislature, or the legislative finance committee. No funds may be expended under an improperly certified budget amendment.

Section 6. Section 5-12-401, MCA, is amended to read:

"5-12-401. Submission of budget amendments to committee. All budget amendments for state agencies must be submitted through the budget director to the legislative finance committee as soon as received by the budget director. No state agency shall expend in excess of the its

~~legislative appropriation except under authority of, which includes a lawfully approved and valid budget amendment."~~

Section 7. Section 5-12-402, MCA, is amended to read:

"5-12-402. Review by legislative fiscal analyst. The legislative fiscal analyst shall review proposed or approved budget amendments ~~submitted to the committee from the budget director~~ and shall make recommendations to the committee concerning proposed or approved budget amendments."

Section 8. Section 17-8-103, MCA, is amended to read:

"17-8-103. Expenditures in excess of appropriation unlawful. (1) It shall be unlawful for the board of trustees, executive board, managerial staff, president, deans and faculty, or any other authority of any state institution maintained in whole or in part by the state or any officer, department, board, commission, or bureau, having charge of the disbursement or expenditure of the income provided by legislative appropriation or otherwise, to expend, contract for the expenditure, or to incur or permit the incurring of any obligation whatsoever, in any one year, in excess of the legislative appropriation or, including any approved, authorized, and valid budget amendment, provided for such year or for any supervisory board or authority either directly or indirectly to authorize, direct, or order any such institution, officer, department, board, commission, or bureau to increase any

1 expenditures, except as specifically provided by law.

2 (2) It shall be and is hereby made the duty of any and
3 all of such institutions, officers, departments, boards,
4 commissions, and bureaus to keep such expenditures,
5 obligations, and liabilities within the amount of such
6 legislative appropriation or, ~~which includes an approved,~~
7 ~~authorized, and valid budget amendment."~~

8 Section 9. Section 17-8-104, MCA, is amended to read:

9 "17-8-104. ~~Penalty Civil and criminal penalties and~~
10 ~~remedies for violation. (1)(a) Any authority or member of~~
11 ~~a board of trustees or any person, officer, or employee~~
12 ~~violating the provisions of 17-8-103 shall be guilty of a~~
13 ~~misdemeanor and upon conviction thereof shall be punished by~~
14 ~~a fine of not less than \$50 or more than \$500 or imprisoned~~
15 ~~by imprisonment in the county jail for not less than 30 days~~
16 ~~or more than 6 months or by both such fine and~~
17 ~~imprisonment.~~

18 ~~(b) Any authority or member of a board of trustees or~~
19 ~~any person, officer, or employee violating the provisions of~~
20 ~~17-8-103 is and in addition thereto said authority, member,~~
21 ~~person, officer, or employee shall be personally liable and~~
22 ~~the surety or sureties on his bond shall also be liable to~~
23 ~~the state for the amount of the excess thus unlawfully~~
24 ~~expended. AN ACTION UNDER THIS SUBSECTION (B) MAY BE~~
25 ~~BROUGHT upon complaint of the attorney general of the~~

1 legislature by joint resolution of a standing committee of
2 the legislature, or of any taxpayer filed in a district
3 court of this state.

4 ~~(c) Any authority or member of a board of trustees or~~
5 ~~any person, officer, or employee violating the provisions of~~
6 ~~17-8-103 is and said authority, member, person, or officer~~
7 ~~shall be guilty of misfeasance in office, and such employee~~
8 ~~shall be guilty of wrongdoing, and each shall be subject to~~
9 ~~removal from office or from such employment. AN ACTION~~
10 ~~UNDER THIS SUBSECTION (C) MAY BE BROUGHT upon complaint of~~
11 ~~the attorney general, the legislature by joint resolution, a~~
12 ~~standing committee of the legislature, or of any taxpayer,~~
13 ~~filed in a district court of this state and upon proof of~~
14 ~~violation of 17-8-103 in accordance with law.~~

15 ~~(2) Complaints under subsections (1)(b) and (1)(c) may~~
16 ~~be combined in a single action.~~

17 ~~(3) Remedies and penalties provided by this section~~
18 ~~may be pursued singly or in any combination."~~

19 NEW SECTION. Section 10. Severability. If a part of
20 this act is invalid, all valid parts that are severable from
21 the invalid part remain in effect. If a part of this act is
22 invalid in one or more of its applications, the part remains
23 in effect in all valid applications that are severable from
24 the invalid applications.

25 NEW SECTION. Section 11. Effective date. This act is

HB 0548/02

1 effective July 1, 1983.

-End-

48th

LEGISLATIVE SESSION

COMMITTEE ON FINANCE & CLAIMS

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
HB 449	3/1/83	3/9&3/16	3/16/83					3/16/83	
HB 510	3/26/83	4/8/83	4/13/83					4/13/83	
HB 526	3/24/83	4/8/83	4/13/83				4/13/83		
HB 548	3/1/83	3/11&3/16	3/16/83					4/16/83	
HB 558	4/14/83	4/15/83	4/15/83				4/15/83		
HB 597	4/5/83	4/12/83	4/14/83					4/14/83	
HB 600	3/26/83	4/11/83	4/13/83					4/13/83	
HB 613	4/5/83	4/11/83	4/13/83					4/13/83	
HB 640	4/5/83	4/9/83		4/13 Tabled					
HB 659	3/1/83	3/9/83	3/9/83						
HB 667	3/24/83	3/30/83	3/30/83				3/30/83		
HB 692	4/6/83	4/11/83	4/13/83				4/13/83		
HB 724	3/19/83	4/9/83		4/13 Tabled					
HB 745	4/5/83	4/12/83	4/14/83					4/14/83	
HB 759	4/5/83	4/11/83		4/13 Tabled					
HB 785	4/5/83	4/9/83	4/13/83				4/13/83		

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF THE MEETING
FINANCE AND CLAIMS COMMITTEE
MONTANA STATE SENATE

March 11, 1983

The 9th meeting of the Senate Finance and Claims Committee met on the above date, room 108 of the State Capitol. Senator Himsl, Chairman, called the meeting to order at 8:10 a.m.

ROLL CALL: All members present.

CONSIDERATION OF HOUSE BILL 247: Representative Ryan, District 49, said this is a simple short little bill to correct a problem to do with an error in bookkeeping in the court house where they lost money in school equalization funds. This would give money to OPI to reimburse Petroleum County. The money is theirs and went back into the general fund and they need the money real bad, it is a little county.

There were no further proponents, no opponents, and Senator Himsl asked if there were questions from the committee.

SENATOR AKLESTAD: I guess I can't understand it, but can't this be done without legislation? Ryan: They have given them some money but it is illegal to do it without legislation and they are afraid it could get them in trouble if they gave them all of it. The amount was bigger than it is now.

SENATOR HIMSL: Run that through again. The county made an error? Ryan: There was an election and a new bookkeeper put it in the wrong column.

SENATOR HIMSL: Does anyone understand why the county equalization fund should revert to the state general fund? Ryan: I have some more stuff on it, but the House committee kept the information.

SENATOR DOVER: Senator Dover explained that with some accounts and certain type of transactions he could see how it would revert.

SENATOR HIMSL: They way they entered it, it indicated they had more money than they really had and it went back to the state that they had too much money.

SENATOR JACOBSON: This money will not be coming out of the general fund, but out of OPI then? Ryan: State equalization fund.

REPRESENTATIVE RYAN: In closing said he would just urge a do pass on the bill.

DISPOSITION OF HOUSE BILL 247: Senator Story moved that the bill do pass. Voted, approved unanimously, Senator Manning to carry the bill.

CONSIDERATION OF HOUSE BILL 548: Representative Marks said that House Bill 548 I sponsored along with a number of others at the request of the Legislative Finance Committee. It is to tighten up and clarify the budget amendment process. The reason it was necessary is because we felt there was rather loose control on the budget amendment process. A number of years ago it was given to the Legislative Finance Committee to review and at that time the Legislative Finance Committee had virtual power over budget amendments. In the case of Governor Judge versus the Legislature, we lost. Since that time they have felt it has not been working as well as it should from a legislative prospective. The budget amendments in the past 3 years have had 10's of millions of dollars added to the budget. That is not to say it was not correct. It has been frustrating to those of us sitting on those committees. We spend a lot of time looking and many times the money has been spent before we get a chance to look at it. I am not here to say it was not all projects that are worth while, but I think we should have better control over it. This would let us see and comment on it before it was approved. The Legislative Finance Committee had an attorney analyze the budget amendment laws. That attorney recommended against any litigation. They recommended that because of the vagueness etc. that we would not get a quick enough finding. We were advised we revise the law. We could then clear up the question of additional services, budget amendment, etc., we would re-draft for clarification and less ambiguity in interpretation. I think Mr. Lewis has spent many hours in the finance committee defending his interpretation. There is a difference of opinion. I think it is a gross waste of time to argue and debate over interpretation when it could be spelled out better and can be defined easier. The finance committee and fiscal analyst does not get the document in time for review. This does not give the finance committee more power, just tightens up the provisions.

There were no further proponents for House Bill 548 and the chairman asked for opponents.

DAVE LEWIS, Director, OBPP, said there is no way we can foresee all the emergencies. To make adjustments in a 2 year period is a necessity for good government. They cannot make any adjustments under general fund. Just other monies. The Legislative Finance committee was set up with delegated authority to basically make appropriation type decisions and was struck down by the Supreme Court. Within the appropriation act, it was an attempt to define everything. The problem is since you cannot see what will happen, you have to make decisions and we have wound up having these internal emergencies. Many times the subcommittees will say go ahead, and do it by a budget amendment.

Mr. Lewis passed out a sheet pointing out what the bill requires in different sections, attached as exhibit 2. He pointed out the difficulty in interpretation and said I run the risk that if one of three could go to court and at that point I would be in trouble. If this bill is the intent of

the Legislature, then simply remove the authority you have given us to make budget amendments. I think the bill goes to far in attempting to set up a series of "tests" during the interim period. I think this bill would make it extremely risky for me to make any decision on a budget amendment.

JACK NOBLE, deputy finance director, University System, said he would also speak as an agent for approval authority for the Board of Regents. We would have many of the same problems that Mr. Lewis has spoken to. The Board of Regents meet approximately once a month, they do approve all budget amendments that are appropriated in the budget account. The problem is that the budget does exceed \$100 million. At the years end if we go over by even \$1 we need a budget amendment. Currently, the Board of Regents let the fiscal auditor have 2%. In lieu of this, I think the Regents would have to live in Helena for the last 6 months to approve all budget amendments. An amendment to insert "or its designated representative" might help. We would have many of the same problems with definition.

MONA JAMISON, Legal Counsel for Governor Schwinden said she would testify on her concerns with this bill. She said in line 21, page 10 it says "in excess of the legislation.. which includes "valid" budget amendment. However, the insert of the word "valid" places a burden on the executive branch in approving the budget amendments making it virtually impossible to ever approve it. It changes the scope of section 9. What can happen is the approving authority can be subject to a fine of from \$50 to \$500 and imprisonment for 30 days to 6 months. If we think of what would place him or the Department representative --page 10, Section B, 17-8-103, he can go to jail for any appropriation that is spent in excess of a "valid" budget amendment. What is a valid budget amendment? What is the criteria? Section 3, page 5 (b) line 19 -- it has to be necessary. Each one of us may have a different interpretation of what is necessary. (c), lines 21 and 22 goes into its validity. Is it reasonable? Perhaps another available alternative might not be one the Legislature would approve of as a whole. Page 6, line 9 "makes no ascertainable present or future committment for increased general fund support." What is ascertainable? It may be reasonable that it is sitting in a bill in Congress. To someone else, it may not be. On page 4, most of the requirements that go to the valididy of the budget amendment. It makes it possible for someone to go to jail. Line 11, ascertainable committment -- unless an emergency, -line 22 - 25 shows how objective they really are, and line 24 epitomizes the vagueness because it says "reasonably should have had" knowledge. That is an extremely subjective term. It presents a maze of uncertainty when you sit down to go

through the requests. What happens is on complaints of the approving authority he can go to court, be fined, or jailed. Whether or not you meet the criteria and whether or not it meets the "standard" of a standing committee could give a person a fear of acting on any budget amendment. If you are going to bring criminal action before the court, the person should know by reading the law whether he will be violating it or not. Page 9, lines 13 through 19--"Any budget amendment that is not certified by the approving authority"etc--can be voided. Certain "conditions" have not been met and therefore not a validly approved budget amendment. By this time all or part of the budget amendment has been spent, and what does he do?

Page 12, line 12, any standing committee of the legislature can bring the complaints. Would you like "any" committee to speak for you? As a legislator you can go out and bring this complaint before the county attorney. As a legislator you may disagree, the committee would have the authority to actually bring the complaint. It is also stated that the Legislature by joint resolution could bring that complaint. This at least recognizes that each legislator has a vote. At least, by Joint Resolution, it would be the majority but with the inclusion of standing committee it raises the constitutional question. The Legislative Finance Committee is not given any more authority. The question is legally, whether a committee can bring a suit. What are the effects?

This reaction to any kind of problems that have come up in relationship to budget amendments is too great a response to anything that has occurred. I would say these kind of sanctions are too severe. Representative Marks has said he is not here today to say anything was done wrong.

If it were me, I would not approve a budget amendment unless it constituted a great and clear emergency under this bill. I don't think I would take the chance. To put this approving authority on the executive and the University system will definitely impede good smooth government.

There were no further proponents, and Senator Himsel asked the committee if there were questions.

SENATOR SMITH: I am Chairman of the Finance Committee and to Mr. Lewis's concern that the bill goes too far, I guess I would ask if some of the instances in the budget amendment in the past maybe the whole process hasn't been too loose. Lewis: I would really not admit to that. There is a good case to be made for each argument we have made. The review has certainly, if anything, did tend to restrict any of the operations we may be tempted to do. We realize that anything we do, we have to defend.

SENATOR SMITH: Won't you admit in the past the particular amendment has not followed the criteria of the law. It was not approved and brought before anyone before spent. Lewis:

I don't know if we have violated the laws since I don't know what the law means.

SENATOR SMITH to Mona Jamison: In regard to your remark that possibly anybody or any agency could take Mr. Lewis to court because of a budget amendment. I am sure you realize the Legislative Finance Committee that does not have an attorney to take anyone to court, would be reluctant. Does anyone honestly think anyone on the Finance Committee would take any one to court? Jamison: I think there would be reluctance. As a lawyer, it does not diminish any of the concern I have.

SENATOR KEATING to Mona Jamison: Did you give this same testimony to the House Committee? Jamison: No. I just briefly testified on this.

SENATOR KEATING: Did you give testimony in opposition, Mr Lewis? Lewis: Before the Finance Committee a couple of times and in the Appropriation committee. We had two votes when done.

SENATOR KEATING: Representative Marks, on page 12 where dealing with action may be taken, etc. in Section 9 it says action can be brought by any taxpayer. Don't you think that is getting a bit broad to leave it open to all these people that somebody might want to take a whack at someone to take them to court? Marks: I am not sure any citizen would be aware as to what shenanigans Mr. Lewis might pull.

SENATOR HAFLEY: I would like to ask Mr. Lewis to answer to something Finance Committee went through. As we prepared our discussion and the draft of this bill, etc., it is to my memory, reported to the committee that you did not have a lot of problem with the way the bill was drafted, etc. One question was the one Senator Keating asked. It was raised often by Senator Van Valkenburg. Another question that was raised was if it would not prevent the state government to go on when a budget amendment had to be done in a timely manner. It is my recollection that you did not have any grave concerns. Lewis: We were given a copy of the bill discussed in the Finance problems. We discussed in writing about 25 or 30 problems. Some of these were corrected. We did not see the bill again until it was introduced in the House. We were never asked again.

SENATOR HAFLEY: This is a very good presentation. What's the reason that this particular testimony was not presented to the House Appropriations Committee? Jamison: We gave testimony in the House Appropriations Committee on other concerns with the bill, some of which were taken care of. We have to look at a lot of bills and after receiving only 2 votes in the Appropriations Committee I took another look

at the bill. At that particular time I did not feel it was that important to build up. I concentrated in the House Testimony on what I thought was constitutional and some of the language has been taken out in response to that testimony.

SENATOR HAFLEY: I guess the most telling point is when you say that this bill should prevent budget amendments from ever being approved. I can't imagine it would not have been the thrust at the House Appropriations. Jamison: Some has been taken out that would not have. As one attorney looking at a lot of bills, I wish I had given this in the House. I apologize. I would hope the presentation I gave in the House was as important on the issues I touched, as what I have given here today on these.

SENATOR BOYLAN: Would the committee on Consumers Council be affected by this bill also? Jamison: Yes. They would be subject to these particular provisions on page 12. In section 1 the definition of agency defines the scope of this particular bill.

SENATOR AKLESTAD: This statement. The individual taxpayer filing a suit against state government. It was brought out in testimony during the year that an individual right now has the authority, this just hones it in on budget amendments. I have a question to Mr. Lewis: As it stands right now the Legislative Finance Committee looks after the fact? Lewis: Yes.

SENATOR AKLESTAD: With that in light, one of the main thrusts would allow the Legislative Analyst to review before the fact? Lewis: Yes.

SENATOR AKLESTAD: If problems, then they would procede into the legal aspects. The budget amendment would go to the Finance Committee and then their interpretation would go to you? Lewis: Yes.

SENATOR AKLESTAD: Don't you think it right for the Finance Committee and LFA to look at this before anything is done?

MR. LEWIS: My intent is to tell you I am not going to approve any budget amendments if this bill goes through in its present form, and I want this very clear to the legislature. As long as the bill is in its present form I will have to take my attorney's advice and I will not make any budget amendments.

SENATOR HIMSL: Miss Jamison, do you have a comment? Jamison: In answer to a question asked by Senator Keating on taxpayers being allowed to sue. A taxpayer has had the right under common law. Now with over 800,000 people not many people follow the budget office, but this broadens the scope.

SENATOR HIMSL: Where in the law is the provision for the Separation of Powers? The executive amendment has the authority to make appropriation of unanticipated expenditures. Jamison: It is in the Appropriation Act. I have looked for other places. It is stated in the Legislative Finance Committee, there is not law from the courts.

SENATOR HIMSL: This in effect, jeopardizes the authority to make budget amendments? Jamison: Yes.

SENATOR VAN VALKENBURG to Mona Jamison: The present law allows this action to be brought by a taxpayer for criminal action. No expansion for that suit. Jamison: What is expanded is the scope of the action. An expenditure in excess of an appropriation. The standing requirements have not changed. What has changed is the scope of the action.

SENATOR VAN VALKENBURG: Is there any way in which this bill could be amended so that you could support the bill? Jamison: If the scope of action were to remain the same but the existing parties, a resolution of the Legislature and the Attorney General. If the language on the validation on page 10 were taken out, but the sanction was the same as before, so that the only way was expended beyond the appropriation was the only crime.

SENATOR REGAN: I would like to follow up on what Senator Van Valkenburg asked. I was one of the few who did sign the bill or vote for it. I took the bill up and visited with Mona about it. I would like to suggest we get a subcommittee to work with her. At least, we might look at that.

SENATOR AKLESTAD: Most of the budget amendments even if before the fact. Some arise that are blatant abuse of the budget amendments. I would ask Mona Jamison--What would be the deterrent to unnecessary budget amendments? What would stop Mr. Lewis or anyone else from going on as before? With your amendment, it pulls everything out. I guess that under the separation of powers in the constitution there is no problem with the Legislature and Executive discussing budget amendments, but at the point where the Legislature could impose sanctions there would be a problem at the present time. Mr. Lewis, if you want to get the entire Legislature involved are you willing to wait 2 years before getting a budget approved? Lewis: The bill as written now leaves us no choice. On the advice of council we simply would not approve many.

MONA JAMISON: I don't think that would be our first option. Budget amendments are a necessary and vital part of the smooth operation of government. The way this bill is written, there would be very little action on budget amendments.

SENATOR SMITH: House Bill 500. According to reading this budget process and reading the law before you, you should have raised that objection to House Bill 500. (He read from the session laws of '81 the boiler language in House Bill 500 and part of Section 4.)

SENATOR BOYLAN: Last time there was a change of Administration. We found quite a few employees of government and the director was changed. Here we have a big deficit. How are we going to correct some of these things without the change of Administration and the legal language here, etc.

SENATOR KEATING: Page 5, line 3, "All budget amendments shall itemize planned expenditures by fiscal year." That is part of section 2 which deals with "no budget amendment may be approved" and (a) through (f) and then this thing is kind of dangling down there. Isn't it supposed to apply to all of them instead of just suggest (f)?

SENATOR HIMSL: I think the suggestion to put this to a subcommittee was very well put. There is dynamite in this thing now and if it would cripple the government it is going to have to be looked at.

SENATOR KEATING: I would withdraw my question.

SENATOR MARKS: This alludes to, if a budget amendment is processed, you have to show it here. It may be placed in the wrong section.

SENATOR HIMSL: That can be looked at in the subcommittee, do you have any closing remarks, Representative Marks?

REPRESENTATIVE MARKS: I appreciate the limited testimony of the opposition. I think every agency director was there complaining about how they would be in jail. I am a little amused when this bill was worked on, we contracted with a lawyer, one that used to work in the same office. He had prepared material for this bill with consultation with that office. No attempt to preclude any budget amendments, we just want to tighten it up. Mr. Lewis indicates that the budget amendment is working. Sure, it is working, but no stopping anything. The first chance the Legislature gets to look at it it is after the fact. Most of the complaints have been just that they don't get it to us so that we can look at it. If you want to give your money away, fine, but if you don't you have to fine-tune the budget amendments so that it will work. What reasonable person is going to send someone to prison if it is done properly? I'm not saying Mr. Lewis did not act in good faith. Only a difference of opinion. On page 5 line 22 "no other alternative available" the Governor's witness wants to put "reasonable" in here and in another place says "reasonable" is an unreasonable term. I think the

message here is that it would be vetoed. If you want some control, I think this is the most over reaction to any bill that I have ever seen. It is no sense sitting on the Finance Committee and arguing over what has already been done.

Senator Himsl declared the hearing on House Bill 548 closed and the subcommittee on this bill would be Senators Etchart, Regan and Van Valkenburg.

CONSIDERATION OF HOUSE BILL 136: Representative Bardanouve, chief sponsor of the bill said this is a fairly small bill and the office of BPP asked me to put it in. It would free up some money so that the Legislature could use it in an easier manner. Presently we hold the money in the account and as the budget office is the one that makes the transferring and doles the money -- it does not give us a net increase in general fund, but makes the money more available.

JANDEE MAY, OBPP, Monies left in the motor vehicle account is deposited at the end of the biennium. It would allow the application of that money to the Justice Department. There is \$369,000 this biennium. In '85, \$1.3 million as a balance. If this bill were to pass it would let the money be used up front. We would deposit it and then have to replace it with \$360,000 in Drivers License Account. It does not create any general fund. It is simply a cleaner way of accounting methods. If the bill is passed, and the appropriation made to the Justice Department it will put the money up front. If the bill is passed and no appropriation made we will be defeating the issue.

There were no further proponents, no opponents, and Senator Himsl asked if there were questions from the committee.

SENATOR KEATING: What are the source of these funds? May: Motor Vehicle Registration, licenses and permits, are about 95% of the revenue.

SENATOR REGAN: This is sort of in opposition to what we generally do. What happens if the funds exceed the appropriation? Can they by budget amendment, spend them? May: The funds at Motor Vehicle Administrator has this concern. What if projected revenue and licenses fall off and the money is not there. They propose that they could, but--

SENATOR REGAN: What happens if it goes the other way? May: That difference would simply stay in the account.

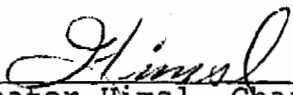
SENATOR REGAN: What difference? Why are we doing it? May: In '79 there was a surplus starting to build in the account and 3 or 4 other programs were funded out of this and then more expenditures than revenue and they dropped the programs back.

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Page 14

of thing. We always get into trouble when we spend something and then don't have it the next year. May: You are saying you may have to back off of earmarked?

SENATOR DOVER: We would help the general fund \$300,000 and \$9,000 later. It would help the general fund more than if all were in the revenue account. May: I see what you are saying.

REPRESENTATIVE BARDANOUVE said he had no further closing remarks. Senator Himsl declared the hearing closed, and the meeting was adjourned subject to the call of the chair.



Senator Himsl, Chairman

Late testimony on House Bill 548 was handed in 3/14 and asked to be attached to the minutes. The testimony is attached, from League of Women Voters, Joy Bruck.

ROLL CALL

FINANCE AND CLAIMS COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 3/11/83

NAME	PRESENT	ABSENT	EXCUSE
<u>Senator Etchart, VC</u>	✓		
<u>Senator Dover</u>	✓		
<u>Senator Keating</u>	✓		
<u>Senator Smith</u>	✓		
<u>Senator Thomas</u>	✓		
<u>Senator Van Valkenburg</u>	✓		
<u>Senator Stimatz</u>	✓		
<u>Senator Story</u>	✓		
<u>Senator Ochsner</u>	✓		
<u>Senator Haffey</u>	✓		
<u>Senator Jacobson</u>	✓		
<u>Senator Regan</u>	✓		
<u>Senator Lane</u>	✓		
<u>Senator Aklestad</u>	✓		
<u>Senator Hammond</u>	✓		
<u>Senator Tveit</u>	✓		
<u>Senator Boylan</u>	✓		
<u>Senator Himsl, Chairman</u>	✓		

OFFICE OF THE GOVERNOR
BUDGET AND PROGRAM PLANNING



TED SCHWINDEN, GOVERNOR

CAPITOL BUILDING

STATE OF MONTANA

(406) 449-3616

HELENA, MONTANA 59620

TESTIMONY ON HOUSE BILL 548

Budget amendments cannot be approved:

- (a) unless funds were not available for legislative consideration.
- (b) if there is any ascertainable commitment for any present or future increased general fund support.
- (c) for special earmarked funds, except in case of an emergency.
- (d) unless additional services are provided.
- (e) for any matter of which the requesting agency had knowledge or reasonably should have had knowledge during session.

The approving authority then must certify:

- (a) specific additional services will be provided.
- (b) the services are necessary.
- (c) the agency has no reasonable alternative available to provide the additional services.
- (d) there is no ascertainable present or future commitment for increased general fund support.
- (e) an emergency exists to justify the expenditure of earmarked funds.

Either the Attorney General, the Legislature, or the Legislative Finance Committee may at any time go to court to determine whether an amendment meets the criteria above. This action could be taken some time after the approving authority has approved the amendment.

Given the nature of the restrictions and certifications required, the court could very well hold that one or more of the criteria had not been complied with. Terms such as "ascertainable commitment", "reasonably should have had knowledge" and "reasonable alternative" are open to almost any judicial interpretation.

If there was any time lag at all in the challenge the funds could have been expended. In this case any taxpayer could bring an action against the approving authority and get him fined, sentenced to jail, or removed from office.

DAVE 3:BB/1

Due to an oversight on our part, we arrived at the Senate hearing on HB 548 late, and we were unable to testify as a proponent as we did at the House hearing. We hope you will accept a written statement from us now.

The League of Women Voters has spent the past four years studying state government financing, and we now have a position on which we can take action. One area we reviewed during our study was the budget amendment process. We concluded from our study that the process is needed, particularly when there is a 21-month span between regular sessions, but we also recognized the opportunities for abuse of the process and the need for the Legislature to be kept currently informed of budget amendments. Our members therefore agreed that there is a need for strong statutory guidelines and more legislative oversight of the process. This bill certainly seems to meet our concerns.

At first, we, too, questioned whether Section 9a & 9b, page 11 & 12 overstepped the 1975 Supreme Court decision dealing with unlawful delegation of powers to a committee of the Legislature....it is such a fine line, and we opposed legislation that would have allowed this to occur. However, we did not interpret this section as fitting into this mold. The only part of the bill we had some reservations about was the penalty section. We do believe that there should be recourse and discipline for violations of the provisions, but were surprised at the degree of severity.

Again, thank you for accepting this late...we do support HB 548, and hope you will give it a "do pass".

Joy Bruck

League of Women Voters of Montana

MINUTES OF THE MEETING
FINANCE AND CLAIMS COMMITTEE
MONTANA STATE SENATE

March 16, 1983

The 10th meeting of the Senate Finance and Claims Committee met on the above date in room 108 of the State Capitol. The meeting was called to order by Senator Himsl, Chairman at 8:11 a.m. for the purpose of taking committee action on House Bills 136, 156, 185, 449 and 548.

DISPOSITION OF HOUSE BILL 156: Senator Himsl reminded the committee that this was a piece of legislation that seemed to come up every year, and with removing the restrictions on the \$6800 limit, the re-marriage section, making it about 20 more eligible, it would push it up to about \$1 million a year. He said this is a biennial request and a continual increase.

SENATOR AKLESTAD: In light of some of the Chairman's remarks, we are opening it up more here. The financial burden that this will impose, and the fact that there may be others who are not getting this treatment, I would MOVE THAT HOUSE BILL 156 BE NOT CONCURRED IN.

SENATOR JACOBSON: I would make a SUBSTITUTE MOTION, that House Bill 156 be concurred in. If you wish to amend it and put back in "as long as said spouses do not remarry" and also if a limit on income, I think that would be appropriate. There are only a few people, but it is very important to people who have been ill and have had the problem most of their lives.

SENATOR AKLESTAD: Amending the bill down is not going to solve the problem. Every year it comes in. The age two years ago was close to co-inciding with the average life of the male so it has not been shortened that much. With that in mind, I think it is bad at this time to increase the funding level.

SENATOR REGAN: (After apologizing to Senator Jacobson) said there is another thing that bothers me. The increase in monthly payments to the surviving spouses. I can remember when only the victims received it, then spouses who had been widows for a certain length of time, increases to make it equal, etc. Now increase it again. In better times, I would support the bill, but now our subcommittee that handled SRS reduced the budget too much and we will have to put more money into ADC and medicare. There is only a certain number of dollars, and this money really should go into medicare. I will have to support Senator Aklestad.

SENATOR HIMSL: Having gone through this for many years, we were told this would be the last time. It doesn't seem there is a last time. I think the amount you would grant here not material enough to make that much difference. It does,

SENATOR HIMSL: If you are going to go through with each one that has a problem, then I guess you can address it. Each one will have a problem.

SENATOR DOVER: Should we have it in there?

SENATOR VAN VALKENBURG: The millage fund has been handled with a supplemental. I am advised that the designated sub-funds are revolving funds. I really think that is where you can get into trouble. I don't think there is a need to do anything specific or special here. I would suspect if we print this bill up and there is any horrendous problem we will all hear about it in force. The need for a loan in earmarked funds are permissible under this bill.

MOTION by Senator Van Valkenburg that House Bill 449, as amended be concurred in. Voted, passed with Senator Himsl voting no, Senators Tveit, Aklestad and Regan absent. Senator Van Valkenburg will carry the bill on the floor.

ACTION ON HOUSE BILL 548: Senator Etchart said the subcommittee had met with Mona Jamison and others, and he would let Senator Van Valkenburg explain the amendments the committee worked up.

SENATOR VAN VALKENBURG: Passed out the amendments, attached as exhibit 3. He said #13 and 14 eliminates the criminal penalty that had been proposed. The committee felt this was the strongest objection to the bill. I think when we do away with that we do away with 80 to 85% of the administrators' objections to the bill. I think it is highly unlikely were a criminal penalty would be a possibility. In practicality it is unlikely. Much is gained in terms of getting the bill filed or past a potential veto that might come down.

Amendments 2, 3 and 4 speak to the University System representative that a designated representative of the approving authority could work. This is something that now the other branches of government can use.

Amendment # 5 -- we have proposed to add "significant" to the criteria that a proposed budget amendment may not incur the possibility of future general fund support. Mr. Lewis had used the example of a particular amendment where we had approved some calculators for the school for the Deaf and Blind. This was largely federal money, but must be plugged in and would force some additional electricity from the general fund money. "Significant" should take care of this. Lewis seemed to be much happier with the addition of this language in the bill, and the Fiscal Analyst and committee members don't feel it was not making a major change in the fund structure.

Amendment # 7 -- In the criteria for budget amendments the proposed language had a provision in it that if an agency had knowledge or reasonably could have had knowledge, then the budget amendment could not be approved. They said this was "vague". We decided if we took out "reasonably would have had" and left it with "knowledge" it would take care of that.

Amendment # 8 added the matter could have been presented to an appropriation subcommittee, the House Appropriations Committee, or the Senate Finance and Claims Committee. If no other funds such as Super Fund for Toxic Waste, etc., then they have a duty to bring it up. After the appropriation bill has left Finance and Claims Committee it is pretty impractical to expect action of any substantial nature, thus the time limit.

Amendment # 9 and 10. This is a clerical error. They put the term "reasonable" in the wrong place.

Amendment # 11 is in line with # 5. Adding significant--more of the same in Amendment # 12. Amendment # 13 and 14 have already been addressed.

Amendment # 15 and 16-- the administration has an objection to being subjected to the whims of any standing committee that may challenge a budget amendment. They think it is an improvement to strike "any standing committee" and inserting "Legislative standing committee. In that regard, they said they would continue to study the bill. They did not want to say they would support the bill as long as it had any reference to the committee in here. They did not object to the taxpayers or the Attorney General bringing a suit but not any committee. The subcommittee thought the Finance Committee was important in keeping the budget and ought to have the authority to go in there and act.

Finally, there was some concern about delay and there is a provision that if the Finance Committee has not submitted an answer within 90 days, it may be approved. Page 7, line 19. There was some concern about the need for budgets that might occur in the last quarter of the year and if this provision would effectively prohibit budget amendments in the last 90 days. Mr. Brussett expressed some concern about it. The subcommittee felt there was no real problem and would not recommend any change in that regard.

MOTION by Senator Van Valkenburg that the committee adopt the amendments 1 through 16 into the bill.

SENATOR KEATING: With regard to page 12, line 2--in regard to any taxpayer being able to bring action. Was it determined that the taxpayer has a constitutional right to do it and that is the reason it was left in the bill or was it addressed?

SENATOR VAN VALKENBURG: Mrs. Jamison made that statement. That was her opinion and I think she has probably done more work on it. Also, the opinion of Joan Uda who had been retained to work on the bill.

SENATOR HIMSL: I guess I have a philosophy problem. This invades the separation of powers. In Colorado they did something like this -- the JBC (Joint Budget Committee). The court held they had no power. They could control it as far as matching funds, but no control on the others (federal funds). For those of us who have a feeling about the separation of powers, -- you should think about this.

SENATOR STORY: Budget amendments themselves, could in fact, be construed to be unlawful from the Legislature itself. A good attorney could argue that we had no authority to let them make budget amendments themselves. This just says we should put these limitations on what kinds.

VOTED, passed, with Senator Himsl casting a "no" vote.

SENATOR KEATING: Several of the committee members are here. I think there is a technical error in the drafting on page 5, line 2 under (f). The second sentence really doesn't apply to that paragraph. I think the sentence was really intended to be another direction. They say on page 4 no budget amendment may be approved--" Line 6, and itemizes by who--etc. It is a different idea and in fact, the whole new section 2 deals with no budget amendment may be approved -- and this sentence just does not apply to subsection (f). I think it should be numbered as another idea.

JUDY RIPPINGALE: They are saying no budget amendment may be approved to extend beyond--. It is intended as a requirement. Just in case they wanted to approve one in '84 and in 84 and 5. It is intended to be that a budget amendment can be approved for a two year period as long as--etc.

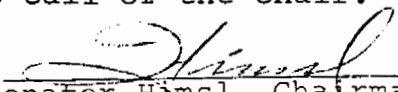
SENATOR KEATING: Does it make sense where it is? Rippingale: They could be made subsequent to-----I think they could be made.

DISPOSITION OF HOUSE BILL 548: Motion by Senator Keating that we renumber section 2 and 3 that's upon line 3 of page 5 start with "we are all" and that be subsection 2, then renumber 3.

Voted, passed, this amendment to be added to the bill.

MOTION by Senator Dover to move the bill as amended. Voted, carried, Senator Van Valkenburg to carry the bill.

The meeting was adjourned to call of the chair.



Senator Himsl, Chairman

ROLL CALL

FINANCE AND CLAIMS COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 3/16/83

NAME	PRESENT	ABSENT	EXCUSED
Senator Etchart, VC	✓		
Senator Dover	✓		
Senator Keating			
Senator Smith	✓		
Senator Thomas	✓		
Senator Van Valkenburg	✓		
Senator Stimatz	✓		
Senator Story	✓		
Senator Ochsner	✓		
Senator Haffey	✓		
Senator Jacobson	✓		
Senator Regan	✓		
Senator Lane	✓		
Senator Aklestad	✓		
Senator Hammond	✓		
Senator Tveit			
Senator Boylan	✓		
Senator Himsl, Chairman	✓		

3
PROPOSED AMENDMENTS TO HOUSE BILL 548 -
by Senate Finance & Claims Committee

1. Page 1, line 9.

Following: "AMENDMENTS;"

Insert: "DELETING THE CRIMINAL PENALTY RELATING TO
EXPENDITURES IN EXCESS OF APPROPRIATIONS;

2. Page 2, line 2.

Following: "agencies"

Insert: "or his designated representatives"

3. Page 2, line 3.

Following: "agencies"

Insert: "or its designated representative"

4. Page 2, line 4.

Following: "system"

Insert: "or its designated representative"

5. Page 4, line 10.

Following: "any"

Insert: "significant"

6. Page 4, line 14

Following: "state"

Strike: "earmarked"

Insert: "special"

7. Page 4, lines 23 and 24.

Following: "knowledge" on page 23.

Strike: "or reasonably should have had knowledge"

8. Page 4, line 25.

Following: "presented to"

Insert: "an appropriation subcommittee, the House Appropriations
Committee, or the Senate Finance and Claims Committee of"

9. Page 5, line 11.

Following: "other"

Strike: "REASONABLE"

10. Page 5, line 22.

Following: "other"

Insert: "reasonable"

11. Page 6, line 10.

Following: "future"

Insert: "significant"

12. Page 6, line 21
Strike: "earmarked"
Insert: "special"

13. Page 11, line 9.
Following: "Civil"
Strike: "and criminal"

14. Page 11, line 10 through line 17.
Following: "violation."
Strike: Subsection (1) (a) in its entirety.
ReNUMBER: subsequent subsections

15. Page 12. line 1.
Following: "resolution, of"
Strike: "a standing committee" ✓
Insert: "the Legislative Finance Committee" ✓

16. Page 12, lines 11 and 12.
Following: "resolution," on line 11
Strike: "a standing committee"
Insert: "the Legislative Finance Committee"

SENATE COMMITTEE

FINANCE AND CLAIMS

Date _____

Bill No. ⁵⁴⁸~~449~~ Time 9:15

Name	YES	NO	ABSENT	EXCUSED
Senator Etchart, VC	✓			
Senator Dover	✓			
Senator Keating	✓			
Senator Smith	✓			
Senator Thomas	✓			
Senator Van Valkenburg	✓			
Senator Stimatz	✓			
Senator Story	✓			
Senator Ochsner	✓			
Senator Haffey	✓			
Senator Jacobson	✓			
Senator Regan	✓			
Senator Lane	✓			
Senator Aklestad			✓	
Senator Hammond	✓			
Senator Tveit			✓	
Senator Boylan	✓			
Senator Himsl, Chairman		✓		

Sylvia Kinsey
Secretary

Senator Himsl
Chairman

Motion: ✓✓ Am.

March 16, 1983

SENATE STANDING COMMITTEE REPORT
(Finance & Claims)

That House Bill No. 548 be amended as follows:

1. Page 1, line 9.
Following: "AMENDMENTS;"
Insert: "DELETING THE CRIMINAL PENALTY RELATING TO EXPENDITURES IN
EXCESS OF APPROPRIATIONS;"
2. Page 2, line 1.
Following: "court"
Insert: "or his designated representative"
3. Page 2, line 2.
Following: "committees"
Insert: "or a designated representative"
4. Page 2, line 3.
Following: "regents"
Insert: "or its designated representative"
5. Page 4, line 10.
Following: "any"
Insert: "significant"
6. Page 4, line 14.
Following "state"
Strike: "earmarked"
Insert: "special"
7. Page 4, lines 23 and 24.
Following: "knowledge" on line 23
Strike: "or reasonably should have had knowledge"
8. Page 4, line 25.
Following "to"
Insert: "an appropriation subcommittee, the house appropriations
committee, or the senate finance and claims committee of"
9. Page 5, line 3.
Following: "biennium"
Insert: "(2)"
Renumber: following subsection
10. Page 5, line 11.
Following: "other"
Strike: "REASONABLE"
11. Page 5, line 22.
Following: "other"
Insert: "reasonable"
12. Page 6, line 10.
Following: "future"
Insert: "significant"

13. Page 6, line 21.

Strike: "earmarked"

Insert: "special"

14. Page 11, line 9.

Following: "CIVIL"

Strike: "and criminal"

15. Page 11, line 10 through line 17.

Following: "violation"

Strike: Subsection (a) in its entirety

Renumber: subsequent subsections

16. Page 12, line 1.

Following: "of"

Strike: "a standing committee of the legislature"

Insert: "the legislative finance committee"

17. Page 12, lines 11 and 12.

Following: "resolution," on line 11

Strike: "a standing committee of the legislature,"

STANDING COMMITTEE REPORT

March 16

19 83

MR. President

We, your committee on Finance and Claims

having had under consideration House Bill No. 548

Marks (Van Valkenburg)

Respectfully report as follows: That House Bill No. 548,
third reading, blue bill, be amended as follows:

1. Page 1, line 9.

Following: "AMENDMENTS;"

Insert: "DELETING THE CRIMINAL PENALTY RELATING TO EXPENDITURES IN
EXCESS OF APPROPRIATIONS;"

2. Page 2, line 1.

Following: "court"

Insert: "or his designated representative"

3. Page 2, line 2.

Following: "committees"

Insert: "or a designated representative"

4. Page 2, line 3.

Following: "reports"

Insert: "or its designated representative"

TO PASS

(continued)

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March 16 19 83

5. Page 4, line 10.
Following: "any"
Insert: "significant"
6. Page 4, line 14.
Following "state"
Strike: "earmarked"
Insert: "special"
7. Page 4, lines 23 and 24.
Following: "knowledge" on line 23
Strike: "or reasonably should have had knowledge"
8. Page 4, line 25.
Following "to"
Insert: "an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of"
9. Page 5, line 3.
Following: "biennium"
Insert: "(2)"
Renumber: following subsection
10. Page 5, line 11.
Following: "other"
Strike: "REASONABLE"
11. Page 5, line 22.
Following: "other"
Insert: "reasonable"
12. Page 6, line 10.
Following: "future"
Insert: "significant"
13. Page 6, line 21.
Strike: "earmarked"
Insert: "special"
14. Page 11, line 9.
Following: "CIVIL"
Strike: "and criminal"
15. Page 11, line 10 through line 17.
Following: "violation"
Strike: Subsection (a) in its entirety
Renumber: subsequent subsections
16. Page 12, line 1.
Following: "of"
Strike: "a standing committee of the legislature"
Insert: "the legislative finance committee"

(continued)

March 16

83

19.....

17. Page 12, lines 11 and 12.

Following: "resolution," on line 11

Strike: "a standing committee of the legislature"

And, as so amended,
BE CONCURRED IN

HC.

1 HOUSE BILL NO. 548

2 INTRODUCED BY MARKS, BARDANOUVE,

3 RAMIREZ, DONALDSON, BENGTSON, PECK, WINSLOW,

4 AKLESTAD, STEPHENS, E. SMITH, GOODOVER,

5 VAN VALKENBURG, HAFLEY, MCCALLUM

6 BY REQUEST OF THE LEGISLATIVE FINANCE COMMITTEE

7
8 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE,
9 EXPAND, AND CLARIFY THE LAW PERTAINING TO BUDGET AMENDMENTS;
10 ~~DELETING THE CRIMINAL PENALTY RELATING TO EXPENDITURES IN~~
11 ~~EXCESS OF APPROPRIATIONS~~; AMENDING SECTIONS 5-12-401,
12 5-12-402, 17-8-103, AND 17-8-104, HCA; AND PROVIDING AN
13 EFFECTIVE DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:16 ~~NEW SECTION~~ Section 1. Definitions. As used in
17 [sections 1 through 5], the following definitions apply:18 (1) "Additional services" means different services or
19 more of the same services.20 (2) "Agency" means each state office, department,
21 division, board, commission, council, committee,
22 institution, university unit, or other entity or
23 instrumentality of the executive branch, office of the
24 judicial branch, or office of the legislative branch of
25 state government.

1 (3) "Approving authority" means the governor or his
2 designated representative for executive branch agencies; the
3 chief justice of the supreme court ~~OR HIS DESIGNATED~~
4 ~~REPRESENTATIVE~~ for judicial branch agencies; appropriate
5 legislative committees ~~OR A DESIGNATED REPRESENTATIVE~~ for
6 legislative branch agencies; or the board of regents ~~OR ITS~~
7 ~~DESIGNATED REPRESENTATIVE~~ for the university system.

8 (4) "Budget amendment" means a legislative
9 appropriation to increase spending authority for the special
10 revenue or ~~FUND~~; proprietary funds, ~~OR UNRESTRICTED SUBFUND~~
11 contingent on total compliance with all budget amendment
12 procedures.

13 (5) "Emergency" means any catastrophe, disaster,
14 calamity, or other equally serious unforeseen and
15 unanticipated circumstance that has occurred subsequent to
16 the time an agency's appropriation was made, which was
17 clearly not within the contemplation of the legislature and
18 the governor, and which seriously affects one or more
19 functions of a state agency and the agency's expenditure
20 requirements for the performance of the function or
21 functions.

22 (6) "Executive branch approving authority" means the
23 governor or his designated representative.

24 (7) "Necessary" means essential to the public welfare
25 and of a nature which cannot wait until the next legislative

1 session for legislative consideration.

2 ~~{8}--"Proposed--to--and--rejected--by--the--legislature"~~

3 ~~means--a--proposal--known--to--the--requesting--agency--the--office~~

4 ~~of--budget--and--program--planning--the--office--of--the~~

5 ~~legislative--fiscal--analyst--or--the--approving--authority--that~~

6 ~~was:~~

7 ~~{a)--made--in--a--bill--which--was--killed;~~

8 ~~{b)--amended--out--of--a--bill--prior--to--final--defeat--or~~

9 ~~enactment--or~~

10 ~~{c)--made--to--and--rejected--by--any--legislative--committee~~

11 ~~or--subcommittee;~~

12 ~~{9}{81} "Requesting agency" means the agency of state~~

13 ~~government that has requested a specific budget amendment.~~

14 ~~{10}--"Special--revenue--funds"--means--accounting--entities~~

15 ~~designated--with--the--beginning--numbers--of--02--and--03--as~~

16 ~~determined--in--the--treasury--fund--accounting--entity--matrix~~

17 ~~dated--December--21--1982--utilized--in--the--executive--budget;~~

18 ~~1984-85--Accounting--entities--beginning--with--the--number--02~~

19 ~~are--designated--"state--special--revenue--or--earmarked"~~

20 ~~entities--Accounting--entities--beginning--with--the--number--03~~

21 ~~are--designated--"other--special--revenue"--entities;~~

22 ~~{11}{91} "University system unit" means the board of~~

23 ~~regents, office of the commissioner of higher education,~~

24 ~~university of Montana at Missoula, Montana state university~~

25 ~~at Bozeman, Montana college of mineral science and~~

1 technology at Butte, eastern Montana college at Billings,

2 northern Montana college at Havre, western Montana college

3 at Dillon, the agricultural experiment station with central

4 offices at Bozeman, the forestry and conservation experiment

5 station with central offices at Missoula, the cooperative

6 extension service with central offices at Bozeman, or the

7 bureau of mines and geology with central offices at Butte.

8 **NEW SECTION.** Section 2. Budget amendment

9 requirements. (1) No budget amendment may be approved:

10 (a) by the approving authority, except a budget

11 amendment to spend funds which were not available for

12 legislative consideration;

13 (b) by the approving authority, which contains any

14 **SIGNIFICANT** ascertainable commitment for any present or

15 future increased general fund support;

16 (c) by the approving authority, for the expenditure of

17 money in the state earmarked **SPECIAL** revenue fund unless an

18 emergency justifies such expenditure;

19 (d) by the approving authority, unless it will provide

20 additional services;

21 ~~{e)--by--the--approving--authority--for--additional~~

22 ~~services--which--have--been--proposed--to--and--rejected--by--the~~

23 ~~legislature--during--or--since--the--most--recent--regular~~

24 ~~legislative--session;~~

25 ~~{f}{E1} by the approving authority, for any matter of~~

1 which the requesting agency had knowledge or--reasonably
 2 should have had knowledge at a time when the proposal could
 3 have been presented to ~~AN APPROPRIATION SUBCOMMITTEE, THE~~
 4 ~~HOUSE APPROPRIATIONS COMMITTEE, OR THE SENATE FINANCE AND~~
 5 ~~CLAIMS COMMITTEE OF~~ the most recent legislative session open
 6 to that matter; or

7 ~~(1)(E)~~ to extend beyond June 30 of the last year of
 8 any biennium.

9 ~~(2)~~ All budget amendments shall itemize planned
 10 expenditures by fiscal year.

11 ~~(2)(3)~~ Each budget amendment must be submitted by the
 12 approving authority to the budget director and the office of
 13 the legislative fiscal analyst.

14 ~~NEW SECTION.~~ Section 3. Budget amendment
 15 certification. In approving a budget amendment, the
 16 approving authority shall make the following certifications
 17 and in addition shall provide all other ~~REASONABLE~~
 18 information required below as an integral part of the
 19 certification:

20 (1) The approving authority shall certify that:

21 (a) specific additional services will be provided as a
 22 result of the expenditures to be permitted under this budget
 23 amendment and shall also list each specific service to be so
 24 provided;

25 (b) the specific services to be provided under this

1 budget amendment are necessary;

2 (c) the agency requesting this budget amendment has no
 3 other ~~REASONABLE~~ alternative available to provide the
 4 additional services. Such certification shall specifically
 5 include determinations by the approving authority that the
 6 agency cannot provide all or specific parts or amounts of
 7 the additional services with existing personnel because of
 8 the present required workload of existing personnel, or that
 9 the agency is unable within its existing funding to fund all
 10 or part of such additional services from any source lawfully
 11 available to it.

12 ~~(d)--the--additional--proposed--services--have--not--been~~
 13 ~~proposed-to-and-rejected-by-the-legislature-during-or--since~~
 14 ~~the-most-recent-regular-legislative-session--and~~

15 ~~(e)(10)~~ the budget amendment makes no ascertainable
 16 present or future ~~SIGNIFICANT~~ commitment for increased
 17 general fund support.

18 (2) The approving authority shall include in its
 19 certification the specific criteria by which the
 20 effectiveness of the additional services will be evaluated
 21 and shall state a specific follow up date on which the
 22 written evaluation of such services, using the listed
 23 criteria, will be presented to the legislative fiscal
 24 analyst. The written evaluation must be presented to the
 25 legislative fiscal analyst on or before that date.

(3) For budget amendments to spend money in the state earmarked **SPECIAL** revenue fund, the approving authority shall certify that an emergency justifies the expenditure and shall state the specific nature of the emergency, the date on which the requesting agency became aware of the emergency, and the manner in which the requesting agency became aware of the emergency.

NEW SECTION. Section 4. Executive branch budget amendment procedures. (1) Upon receiving a proposed budget amendment from a requesting agency, the executive branch approving authority shall immediately forward a copy of the entire budget amendment to the legislative fiscal analyst.

(2) If the executive branch approving authority denies the request for a budget amendment, he shall immediately forward a notice of denial to the legislative fiscal analyst.

(3) If the executive branch approving authority intends to make certification of the budget amendment, immediately upon his completion of the certification he shall forward the certification and all supporting documentation to the legislative fiscal analyst. The executive branch approving authority may not approve the budget amendment until he receives the legislative finance committee's written report for that budget amendment unless:

(a) the report is not received within 90 calendar days

from the date the certification and supporting documentation were forwarded to the finance committee, in which case the approving authority may approve the budget amendment; or

(b) there has been a waiver of review and report as provided in subsection (6).

(4) The legislative fiscal analyst shall review each proposed budget amendment that has been certified by the executive branch approving authority for compliance with statutory budget amendment requirements and standards and shall present a written report of this review to the legislative finance committee. Within 10 days after the meeting of the legislative finance committee that considered the budget amendment, the legislative fiscal analyst shall submit the committee's report to the executive branch approving authority.

(5) Upon receipt of the legislative finance committee's written report, the executive branch approving authority may approve or deny the budget amendment or may return the budget amendment to the requesting agency for further information. If the executive branch approving authority has returned the budget amendment to the requesting agency and the requesting agency resubmits the budget amendment to the executive branch approving authority, all procedures set out in this section apply to the resubmitted budget amendment.

1 (6) If an emergency occurs that poses a serious threat
 2 to the life, health, or safety of the public, the
 3 legislative fiscal analyst may waive his written review and
 4 the legislative finance committee's written report required
 5 by this section. Upon receipt of such waiver, the executive
 6 branch approving authority may approve the budget amendment
 7 on completion of his certification. Such a waiver, however,
 8 affects only the legislative fiscal analyst's written review
 9 and the legislative finance committee's written report on
 10 the budget amendment, and all other budget amendment
 11 requirements and standards remain in effect. After such a
 12 waiver, the legislative fiscal analyst may complete the
 13 written review.

14 (7) Nothing in [sections 1 through 5] confers any
 15 authority on the legislative finance committee to approve or
 16 deny budget amendments.

17 **NEW SECTION.** Section 5. Voidness of improperly
 18 certified budget amendments. Any budget amendment that is
 19 not certified by the approving authority according to the
 20 standards and procedures set out in [sections 1 through 5]
 21 may be declared void in its entirety by a court of competent
 22 jurisdiction on complaint of the attorney general, the
 23 legislature, or the legislative finance committee. No funds
 24 may be expended under an improperly certified budget
 25 amendment.

1 Section 6. Section 5-12-401, MCA, is amended to read:
 2 "5-12-401. Submission of budget amendments to
 3 committee. All budget amendments for state agencies must be
 4 submitted through the budget director to the legislative
 5 finance committee as soon as received by the budget
 6 director. No state agency shall expend in excess of the its
 7 legislative appropriation except under authority of, which
 8 includes a lawfully approved and valid budget amendment."

9 Section 7. Section 5-12-402, MCA, is amended to read:
 10 "5-12-402. Review by legislative fiscal analyst. The
 11 legislative fiscal analyst shall review proposed or approved
 12 budget amendments submitted to the committee from the budget
 13 director and shall make recommendations to the committee
 14 concerning proposed or approved budget amendments."

15 Section 8. Section 17-8-103, MCA, is amended to read:
 16 "17-8-103. Expenditures in excess of appropriation
 17 unlawful. (1) It shall be unlawful for the board of
 18 trustees, executive board, managerial staff, president,
 19 deans and faculty, or any other authority of any state
 20 institution maintained in whole or in part by the state or
 21 any officer, department, board, commission, or bureau,
 22 having charge of the disbursement or expenditure of the
 23 income provided by legislative appropriation or otherwise,
 24 to expend, contract for the expenditure, or to incur or
 25 permit the incurring of any obligation whatsoever, in any

1 one year, in excess of the legislative appropriation or,
2 ~~including any approved~~ authorized, and valid budget
3 amendment, provided for such year or for any supervisory
4 board or authority either directly or indirectly to
5 authorize, direct, or order any such institution, officer,
6 department, board, commission, or bureau to increase any
7 expenditures, except as specifically provided by law.

8 (2) It shall be and is hereby made the duty of any and
9 all of such institutions, officers, departments, boards,
10 commissions, and bureaus to keep such expenditures,
11 obligations, and liabilities within the amount of such
12 legislative appropriation or, ~~which includes an approved~~
13 ~~authorized, and valid~~ budget amendment."

14 Section 9. Section 17-8-104, MCA, is amended to read:

15 "17-8-104. ~~Penalty Civil and criminal penalties and~~
16 ~~remedies~~ for violation. (1) ~~Any authority or member of a~~
17 ~~board of trustees or any person, officer, or employee~~
18 ~~violating the provisions of 17-8-103 shall be guilty of a~~
19 ~~misdemeanor and upon conviction thereof shall be punished by~~
20 ~~a fine of not less than \$50 or more than \$500 or imprisoned~~
21 ~~by imprisonment in the county jail for not less than 30 days~~
22 ~~or more than 6 months or by both such fine and~~
23 ~~imprisonment.~~

24 ~~(1)(A) Any authority or member of a board of trustees~~
25 ~~or any person, officer, or employee violating the provisions~~

1 ~~of 17-8-103 is and in addition thereto said authority~~
2 ~~member, person, officer, or employee shall be personally~~
3 ~~liable and the surety or sureties on his bond shall also be~~
4 ~~liable to the state for the amount of the excess thus~~
5 ~~unlawfully expended.~~ AN ACTION UNDER THIS SUBSECTION ~~(B)~~
6 ~~(A) MAY BE BROUGHT~~ upon complaint of the attorney general,
7 of the legislature by joint resolution, of a standing
8 committee ~~of the legislature~~ THE LEGISLATIVE FINANCE
9 COMMITTEE, or of any taxpayer filed in a district court of
10 this state.

11 ~~(1)(B) Any authority or member of a board of trustees~~
12 ~~or any person, officer, or employee violating the provisions~~
13 ~~of 17-8-103 is and said authority, member, person, or~~
14 ~~officer shall be guilty of misfeasance in office and such~~
15 ~~employee shall be guilty of wrongdoing and each shall be~~
16 ~~subject to removal from office or from such employment.~~ AN
17 ACTION UNDER THIS SUBSECTION ~~(B)~~ (B) MAY BE BROUGHT upon
18 complaint of the attorney general, the legislature by joint
19 resolution, a standing committee of the legislature, or of
20 any taxpayer, filed in a district court of this state and
21 upon proof of violation of 17-8-103 in accordance with law.

22 (2) Complaints under subsections (1) ~~(B)~~ (A) and
23 ~~(1)(B)~~ may be combined in a single action.

24 (3) Remedies and penalties provided by this section
25 may be pursued singly or in any combination."

1 NEW_SECTION. Section 10. Severability. If a part of
2 this act is invalid, all valid parts that are severable from
3 the invalid part remain in effect. If a part of this act is
4 invalid in one or more of its applications, the part remains
5 in effect in all valid applications that are severable from
6 the invalid applications.

7 NEW_SECTION. Section 11. Effective date. This act is
8 effective July 1, 1983.

-End-